IN THE

# Supreme Court of the United States

OCTOBER TERM, 1950.

---

No.

---

CREST SPECIALTY (NOT INC.),

*Petitioner,*

*vs.*

DAVID C. TRAGER, DOING BUSINESS AS TOPIC TOYS, AND EOINA NUDELMAN,

*Respondents.*

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

---

In the

# United States Court of Appeals

## For the Seventh Circuit

**No. 10118**

DAVID C. TRAGER, DOING BUSINESS AS TOPIC TOYS, AND EOINA NUDELMAN,

*Plaintiffs-Appellees,*

*vs.*

CREST SPECIALTY (NOT INC.),

*Defendant-Appellant.*

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

## INDEX.


Placita ..... 1
Complaint, filed Jan. 4, 1949 ..... 2
Answer, filed Feb. 4, 1949 ..... 7
Stipulation of Facts, filed Oct. 21, 1949 ..... 10


### TRANSCRIPT OF PROCEEDINGS.

#### Witnesses for Plaintiffs.

Testimony of:


Eliot, Sol S. ..... 24
Gerber, Gladys ..... 23
Goldman, Morris N. ..... 30
Scharle, Dorothy ..... 20
Trager, David C. ..... 13


#### Witness for Defendant.

Testimony of:


Snow, William A. ..... 35


#### Plaintiffs' Exhibits.


| | Introduced in evidence at page | Reproduced at page |
|---|---|---|
| No. 1—Nudelman Patent—No. 2,455,266 | 12 | 132 |
| No. 2—Defendants' box and contents consisting of puppy, bowl, spoon and fork, and cup | 12 | |
| No. 3—Plaintiffs' large box and contents consisting of piggy, bowl, fork and spoon, and rack for fork and spoon | 13 | |
| No. 4—Plaintiffs' small box and contents consisting of piggy and bowl | 13 | |

| | Introduced in evidence at page | Reproduced at page |
|---|---|---|
| No. 5—Plaintiffs' printed literature describing contents of its box | 14 | 67 |
| No. 6—Tabulation of plaintiffs' sales | 16 | 68 |
| No. 7—Photograph of contents of plaintiffs' box | 17 | 69 |
| No. 8—Plaintiffs' Circular | 17 | 70 |
| No. 9—Newspaper advertisement of plaintiff | 18 | 72 |
| No. 10—Plaintiffs' photograph used for publicity purposes | 19 | 73 |
| No. 11—Photostat of newspaper clippings | 19 | 74 |
| No. 12—Photostat of Defendants' advertisement in "Toys & Novelties" for October 1948 | 27 | 75 |
| No. 13—Manaster Patent—No. 2,453,922 | 29 | 180 |
| No. 14—File Wrapper of Manaster Patent—No. 2,453,922 | 29 | 77 |
| No. 15—Plaintiffs' chart of comparison between claims of Nudelman patent in suit and defendants' device | 66 | 109 |

DEFENDANTS' EXHIBITS.

| | | |
|---|---|---|
| No. 1—Book of Prior Art Patents | 35 | |
| No. 2—Defendants' chart of comparison between claim 2 of Nudelman patent in suit and Smith Patent—No. 2,207,417 | 47 | 110 |
| No. 3—Cereal bowl | 47 | |
| No. 3a—Model of Figure 4 of Smith Patent—No. 2,207,417 | 47 | |
| No. 4—Theodoropulos Patent—No. 1,792,129 | 47 | 158 |
| No. 5—File Wrapper of Nudelman Patent—No. 2,455,266 | 47 | |
| No. 6—L'Heureux Patent—No. 2,200,696 | 65 | 166 |
| No. 7—Ide, et al., Patent—No. 2,224,683 | 65 | 174 |

Findings of Fact, filed Jan. 19, 1950 ..... 111
Conclusions of Law ..... 117
Judgment, entered Jan. 26, 1950..... 119
Notice of Appeal, filed Jan. 26, 1950..... 121
Statement of Points ..... 123
Supersedeas Order ..... 124
Order approving bond ..... 125
Bond on Appeal ..... 125
Order re: Exhibits ..... 127
Designation of Record ..... 128
Additional Designation of Record ..... 130

UNITED STATES LETTERS PATENT.

No. 2,455,266—E. Nudelman, Nov. 30, 1948..... 132
No. 226,831—J. H. Bowen, Apr. 27, 1880..... 136
No. 356,168—T. R. Shea, Jan. 18, 1887..... 141
No. 516,354—R. MacMorris, May 13, 1894..... 144
No. 843,024—T. J. Livingston, Feb. 5, 1907..... 148
No. 1,751,773—B. B. Trosper, Mar. 25, 1930..... 152
No. 1,792,129—A. A. Theodoropulos, Feb. 10, 1931.... 158
No. 2,170,311—E. P. Smith, Aug. 22, 1939..... 162
No. 2,200,696—L. J. L'Heureux, May 14, 1940..... 166
No. 2,207,417—I. A. Smith, July 9, 1940..... 170
No. 2,224,683—K. Ide, et al., Dec. 10, 1940..... 174
No. 2,453,922—B. B. Manaster, Nov. 16, 1948..... 180
Clerk's Certificate ..... 183
Stipulation re: printing record..... 184

1 Pleas had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of January (it being the 2nd day thereof) in the Year of Our Lord One Thousand Nine Hundred Fifty and of the Independence of the United States of America, the 174th Year.

Present:

Honorable John P. Barnes, District Judge.
Honorable Philip L. Sullivan, District Judge.
Honorable Michael L. Igoe, District Judge.
Honorable William J. Campbell, District Judge.
Honorable Walter J. La Buy, District Judge.
Honorable Elwyn R. Shaw, District Judge.
Honorable William H. Holly, District Judge.
Roy H. Johnson, Clerk.
Thomas P. O'Donovan, Marshal.

Thursday, January 26, 1950.

Court met pursuant to adjournment.

Present: Honorable Michael L. Igoe, Trial Judge.

2 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

| | |
|---|---|
| David C. Trager, doing business as Topic Toys, and Eoina Nudelman, an Individual, *Plaintiffs,* *vs.* Crest Specialty (Not Inc.), a limited partnership consisting of Ben B. Manaster, Rose Manaster, Carol Ruth Manaster, and Sol Eliot, *Defendants.* | No. 49-C-8. |

Be It Remembered, that, on to-wit: the 4th day of January, 1949, the above-entitled action was commenced by the filing of the following Complaint in the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, in words and figures following, to-wit:

3 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—49-C-8) * *

## COMPLAINT.

Plaintiffs, David C. Trager, doing business as Topic Toys, and Eoina Nudelman, an individual, for their complaint against the Defendants allege:

1. This is a civil action for infringement of United States Letters Patent and is based on the Patent Laws of the United States, and is also an action for unfair competition arising out of the said infringement.

2. Plaintiff David C. Trager is an individual, a citizen of the United States of America, and a resident of the State of Illinois and the City of Chicago, and is doing business as Topic Toys, with a principal place of business

located at 174 West Jackson Boulevard, Chicago, in the County of Cook and State of Illinois.

3. Plaintiff Eoina Nudelman is an individual, a citizen of the Republic of France, residing in the United States of America, and a resident of the City of Chicago and State of Illinois, residing at 4 East Ohio Street, Chicago, Illinois.

4 4. The Defendants, Crest Specialty (not Inc.) is a limited partnership consisting of Ben B. Manaster, Rose Manaster, Carol Ruth Manaster, and Sol Eliot, with their principal place of business located at 663 West Washington Boulevard, Chicago, in the County of Cook and State of Illinois, at which place of business, as well as elsewhere in the United States, acts of infringement and acts of unfair competition herein complained of were committed.

5. On November 30, 1948, United States Letters Patent No. 2,455,266 were duly and legally issued to Plaintiff Eoina Nudelman for an invention in a Children's Amusement Device; and since that date Plaintiff Eoina Nudelman has been and still is the owner of said Letters Patent.

6. Plaintiff David C. Trager, doing business as Topic Toys has the sole and exclusive license to make, use and sell throughout the United States of America, the improvements set forth in said Letters Patent No. 2,455,266.

7. Plaintiff David C. Trager, doing business as Topic Toys has pursuant to said exclusive license and for some time past manufactured and sold the invention embodied in said Letters Patent and has made same available to the public.

8. Plaintiff David C. Trager, doing business as Topic Toys has placed the required statutory notice on all Children's Amusement Devices manufactured and sold by him under said Letters Patent since the issuance of said patent.

9. The Defendants, Crest Specialty, a limited partnership composed of the individuals identified in paragraph 4 hereof, have and still are infringing said Letters Patent by making, selling and using Children's Amusement Devices embodying the patented invention as claimed in

5 Claims 2 and 3 of said patent, and will continue to do so unless enjoined by this Court.

10. In addition to the acts of infringement hereinabove complained of, the Defendants have engaged in unfair competition with Plaintiffs, as hereinafter set forth.

(a) The Plaintiff David C. Trager, doing business as

Topic Toys, and pursuant to said license from the patentee Eoina Nudelman was the first to manufacture and sell a Children's Amusement Device consisting of an animal character, with the body of the animal character positioned adjacent the exterior of a feeding bowl, with the forelegs of the animal character extending forwardly and overlying a portion of the bowl, with the said animal character having a simulated mouth and a passage which extends downwardly from the mouth, whereby the contents of a spoon may be poured into said simulated mouth and fall by gravity into the feeding bowl.

(b) The said Plaintiff has extensively advertised said Children's Amusement Device throughout the trade, and has sold a large number of said Children's Amusement Devices throughout the United States.

(c) The said Plaintiff in packaging said Children's Amusement Device has packaged it with a feeding bowl and a spoon and fork of children's size made of plastic with the handles thereof formed to simulate in relief the head of an animal character, and the said Plaintiff has sold said component parts all in one box and package, and the said Plaintiff has illustrated and depicted on the box cover the said Children's Amusement Device positioned against a feeding bowl and illustrating the manner whereby the food in a feeding spoon is poured into said Children's Amusement Device and empties back into said bowl, and the said Plaintiff has so packaged and sold its said product throughout the trade and has built up a
6 valuable good will and a large and substantial business in connection therewith, and Plaintiff further alleges that since Defendants' infringement and unfair competition said Plaintiffs have sustained and are now sustaining a large and substantial loss of sales and business in said Amusement Devices, and have sustained and are now sustaining large and substantial damages.

(d) That due to the unique character, characteristics and appearance of said Children's Amusement Device, as being the first of its kind ever manufactured and produced anywhere, the said Children's Amusement Device has become so associated with the said Plaintiff in the minds of the buyers and the public as to have acquired significance or secondary meaning to cause any Children's Amusement Device of substantially the same unique character, characteristics and appearance to be ascribed to the Plaintiff as the source of production, and the Defendants have ex-

tensively advertised, offered for sale, and have made and sold infringing Children's Amusement Devices having said unique character, characteristics and substantially the same appearance as that of Plaintiff's, with the intent and result of profiting in the inevitable confusion created by Defendants' infringing devices.

(e) The Defendants have imitated and copied the Plaintiffs' Children's Amusement Device by making an animal character of the same material, with the body of the animal character positioned adjacent the exterior of a feeding bowl, with the forelegs of the animal character extending forwardly and overlying a portion of the bowl, with the said animal character having a simulated mouth and a passage which extends downwardly from the mouth whereby the contents of a spoon may be poured into the simulated mouth and fall by gravity into the feeding bowl.

7 (f) The Defendants in packaging said device have packaged same in association with a feeding bowl and in said package have included a Children's size plastic feeding spoon and fork, the handle portions of which have formed in relief the head of an animal character, and the Defendants have illustrated and depicted on the box cover a Children's Amusement Device positioned against a feeding bowl and illustrating the manner whereby the food in a feeding spoon is poured into the Children's Amusement Device and empties back into the feeding bowl.

(g) The Defendants have unfairly copied the distinctive features of Plaintiffs Children's Amusement Device, have unfairly associated it with other parts, and have unfairly packaged same in a container, all closely resembling and similar to the said Plaintiff, and that as a result thereof the Defendants have been and still are engaged in unfair competition with Plaintiffs, all to the injury of Plaintiffs.

Wherefore, Plaintiffs demand a preliminary and final injunction against further infringement of Claims 2 and 3 of Patent No. 2,455,266 by the Defendants and all of them; a preliminary and final injunction against the unfair competition by Defendants and those controlled by Defendants; and an accounting for damages and reasonable royalty as a result of said patent infringement, together with an accounting for profits and damages as a result of the unfair competition; together with the costs of the suit

and interest, and that Plaintiffs be awarded a reasonable attorney's fee, and pray for such other and further relief as to the Court may seem just.

David C. Trager,
Eoina Nudelman.

Max R. Kraus,
*Attorney for Plaintiffs,*
33 North LaSalle Street,
Chicago, Illinois.

8 State of Illinois, } ss.
County of Cook. }

David C. Trager, being duly sworn, deposes and says that he is one of the Plaintiffs in the foregoing Bill of Complaint; that he has read said Bill of Complaint, and that the facts therein stated are true, except as to such facts as may be stated on information and belief, and as to such facts he believes them to be true.

David C. Trager.

Subscribed and sworn to before me this 4th day of January, 1949.

Mildred L. Guttman,
*Notary Public.*

(Seal)

State of Illinois, } ss.
County of Cook. }

Eoina Nudelman, being duly sworn, deposes and says that he is one of the Plaintiffs in the foregoing Bill of Complaint; that he has read said Bill of Complaint, and that the facts therein stated are true, except as to such facts as may be stated on information and belief, and as to such facts he believes them to be true.

Eoina Nudelman.

Subscribed and sworn to before me this 4th day of January, 1949.

Mildred L. Guttman,
*Notary Public.*

(Seal)

(Letters Patent Attached But Not Copied.)

9 And afterwards on, to wit, the 4th day of February, 1949 came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Answer in words and figures following, to wit:

10 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—49-C-8) * *

## DEFENDANT'S ANSWER.

Now come the defendants named in the above entitled complaint, by their attorney, Clarence E. Threedy, and make answer to the complaint as follows:

1.

Defendants deny that the alleged charge of unfair competition is an action arising out of an alleged charge of infringement based on the Patent Laws of the United States and deny that this Court has jurisdiction in respect to said alleged charge of unfair competition and, therefore, by reason thereof, move that the complaint be dismissed insofar as it is bottomed upon an alleged charge of unfair competition.

2.

Defendants admit the allegations contained in Paragraphs 2 and 3 of the complaint herein.

3.

Defendants admit that it is a limited partnership as alleged in paragraph 4 of the complaint herein but deny that they have committed the acts of infringement or unfair competition as charged in the complaint and that this
11 Court has jurisdiction with respect to the alleged charge of unfair competition.

4.

Defendants admit that a document purporting to be Letters Patent No. 2,455,266 were issued on November 30, 1948, as alleged in paragraph 5 of the complaint herein, but, upon information and belief, deny that said Letters Patent No. 2,455,266 were duly, legally or validly issued.

5.

Defendants are not informed, save by the complaint herein, as to the allegations set forth in paragraph 6 of such complaint and, therefore, deny the same.

6.

Defendants are not informed, save by the complaint herein, as to whether Eoina Nudelman is the owner of Letters Patent No. 2,455,266, and, therefore, leave plaintiffs to strict proof thereof.

7.

Defendants have no knowledge of the allegations contained in paragraphs 7 and 8 of the complaint herein and, therefore, call upon plaintiffs for strict proof thereof.

8.

Defendants deny each and every allegation contained in paragraphs 9 and 10 and sub-paragraphs a to g inclusive of the complaint herein and call upon plaintiffs for strict proof thereof.

9.

Defendants deny that plaintiffs are entitled to any injunction, accounting, assessment, relief or aid of any nature whatsoever as prayed for in the complaint herein.

First Defense.

Defendants deny that they have or are now infringing said Letters Patent No. 2,455,266, particularly claims
12 2 and 3 thereof, or that they have committed the acts of unfair competition as charged in the complaint herein or are in any way engaged in unfair competition with plaintiffs.

Second Defense.

Defendants aver and believe the fact to be that Letters Patent No. 2,455,266, and particularly claims 2 and 3 thereof, are invalid, void and of no effect because the alleged invention, improvement and discovery thereof has been known, used, described and published before the patentee's

purported invention thereof and more than one year prior to his application for said patent, and all of the material and substantial parts of said alleged invention and improvement thereof are disclosed and taught in certain publications including the following U. S. Patents and publications:

| Patent No. | Patentee | Date | Title |
|---|---|---|---|
| 226,831 | J. H. Bowen | April 27, 1880 | Toy Money Box |
| 516,354 | R. MacMorris | Mar. 13. 1894 | Detachable Mustache Shield or Guard for Cups |
| 1,751,773 | B. Trosper | Mar. 25, 1930 | Toy Figure |
| 2,170,311 | E. P. Smith | Aug. 22, 1939 | Bowl |
| 2,207,417 | I. A. Smith | July 9, 1940 | Cereal Bowl |

Third Defense.

Defendants aver further that said Letters Patent No. 2,455,266, and particularly claims 2 and 3 thereof, are invalid and void because the alleged invention purported to be disclosed and described thereby is devoid of any patentable novelty in view of prior knowledge and the well-known state of the art, and does not constitute patentable subject matter within the meaning of the U. S. Patent Statutes, but, on the contrary, represents a mere aggregation of old and well-known parts and expediencies in common use long prior to any alleged invention by the patentee
13 and within the reach and skill of any mechanic or artisan working in the art to which said alleged invention appertains and in analogous arts.

Fourth Defense.

Defendants aver that each and every claim of the patent in suit, and especially claims 2 and 3 thereof, were so limited and restricted by proceedings had and of record in the U. S. Patent Office in connection with the application for said patent, that said claims cannot now be construed and enlarged to such breadth and scope as to cover any device made, used, or sold by these defendants or any party in privity with them.

Prayer.

Wherefore, defendants pray that the complaint herein be dismissed for want of equity and that said Letters Patent No. 2,455,266, and particularly claims 2 and 3 thereof, be declared invalid and not infringed and that plaintiffs be required to pay the full cost of this suit and that defendants have such other aid and relief in the premises as shall be deemed just and equitable.

Crest Specialty (Not Inc.),
By Clarence E. Threedy,
*Its Attorney.*

February 4, 1949,
Chicago, Illinois.

Receipt of a copy of the foregoing Answer is hereby acknowledged this 4th day of February, 1949.

Max Richard Kraus,
By Genevieve Grendal,
*Attorney for Plaintiffs.*

14 And afterwards on, to wit, the 21st day of October, 1949 came the Parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation in words and figures following, to wit:

15 In the District Court of the United States.
* * (Caption—49-C-8) * *

STIPULATION.

It Is Hereby Stipulated And Agreed, by and between counsel for the parties to the above-entitled cause, for the purposes of this case only, as follows:

1. That the ownership of the title to the patent in suit is in plaintiff Eoina Nudelman as alleged in the Complaint.

2. That plaintiff David C. Trager, doing business as Topic Toys, has by virtue of a license agreement entered into between plaintiff Eoina Nudelman and said David C. Trager, the sole and exclusive license to make, use, and sell throughout the United States of America the improvement set forth in letters patent No. 2,455,266 in suit.

3. That the contents of the carton entitled "Puppy Tu Eats with You", consisting of a bowl, tumbler, spoon and fork, and dog figure, which are marked collectively as Plaintiffs' Exhibit 2, have been manufactured and sold
16 by the defendants within the Northern District of Illinois and elsewhere since November 30, 1948, and were being manufactured and sold at the time of the filing of the Complaint herein.

4. That either party may offer and use in evidence ordinary uncertified printed copies of United States letters patent or photostatic copies thereof; that in the case of other printed publications, reprints or phostatic copies of one or more pages thereof may be offered and used in evidence by either party; that said copies of patents and printed publications or photostatic reproductions thereof may be used with the same force and effect as the originals or duly certified copies thereof, subject to correction if error be made to appear, and subject to the same objections as the originals; and provided further, that in the case of the use of less than an entire publication, the opposing party shall have the right to offer in evidence reprints or photostatic copies of such other parts or of the whole of such publication or publications as it may choose.

5. That on said copies of said patents offered and received in evidence, the application filing dates printed upon the United States patents shall be accepted as the correct dates upon which the original applications for the respective patents were filed; the patent dates appearing on said United States patents shall be accepted as the correct dates of patenting and publication thereof; the dates and other facts of publication appearing on the title page or other part of printed publications shall be accepted as prima facie proof of such dates and facts of publication; that the dates shown by the library stamp of the United States Patent Office appearing on any printed publication shall be accepted as prima facie proof that a copy of
17 said publication was in the United States Patent Office as early as said date—all of the foregoing being subject to correction if error be made to appear therein.

Sidney Neuman,
*Attorney for Plaintiffs,*
Clarence E. Threedy,
*Attorney for Defendants.*

Chicago, Illinois,
October 11, 1949.

18 And afterwards on, to wit, the 26th day of January, 1950 there was filed in the Clerk's office of said Court a certain Transcript Of Proceedings Had Before Honorable Michael L. Igoe, Judge, Portions Of Which, are in words and figures following, to wit:

20 Mr. Neuman: If your Honor please, we have entered into a stipulation which covers various formal matters and which also covers our agreements as to the use of printed copies of the patents, photostats and publications and things of that sort.

The Court: You want this filed, I take it?

Mr. Neuman: I wish to file that, yes.

The Court: No objection to that?

Mr. Neuman: It is the stipulation.

Mr. Threedy: No, no objection to that.

Mr. Neuman: I wish to have marked as Plaintiff's Exhibit No. 1 a copy of the Nudelman patent.

Mr. Threedy: If your Honor please, it has just been called to my attention that I stated the Smith patent was issued in 1949. That is in error.

The Court: When was it issued?

Mr. Threedy: 1940.

Mr. Neuman: Plaintiffs' Exhibit No. 1.

(Which said document was so marked PLAINTIFFS' EXHIBIT No. 1 for identification and was thereupon received in evidence.)

Mr. Neuman: I wish to make an offer in evidence of Plaintiffs' Exhibit No. 2, the defendants' device. In
21 that stipulation which I handed to your Honor we have provided that this box and its contents, the contents consisting of a puppy and the bowl, a spoon and a fork and a cup, was manufactured and sold by the defendants, subsequent to the issuance of our patent and before the filing of this law suit, I would like to make an offer—

The Court: That is stipulated, is it?

Mr. Threedy: That is correct, yes.

Mr. Neuman: I would like to mark the box and contents as collective exhibit, Plaintiffs' Exhibit No. 2.

(Which said articles were so marked as PLAINTIFFS' EXHIBIT No. 2 for identification and were thereupon received in evidence.)

The Court: In the figure of the puppy, does the food go into the bowl, too?

Mr. Threedy: That is correct, yes.

22 DAVID C. TRAGER, one of the Plaintiffs herein, called on behalf of the Plaintiffs, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Neuman.*

Q. Will you please state your name and residence?
A. David C. Trager, 6200 North Kenmore.
Q. You are one of the plaintiffs in this suit?
A. I am.
Q. And what is the name under which you are doing business, please, Mr. Trager?
A. Topic Toys.
Q. I show you two cartons, each being entitled "Hungry Piggy" and ask you whether or not you are the manufacturer and seller of the "Hungry Piggy" feeding set?
(Articles shown to the witness.)
A. I am.
Q. Are these the cartons in which your merchandise is sold?
A. They are the boxes, yes.
Q. All right, what is the difference between the two boxes?

23 A. Well, in the smaller box we have the "Hungry Piggy," and bowl alone, and in the larger box, we term it a five-piece unit which includes a fork, a spoon, and a stand for the fork and spoon as well as the bowl and the "Piggy."

Mr. Neuman: I would like to mark these as Plaintiffs' Exhibits 3 and 4 as being the form in which the patented device has been sold.

Let us mark the large box and its contents as Plaintiffs' Exhibit 3 and the small box and its contents as Plaintiffs' Exhibit 4.

(Which said articles were marked PLAINTIFFS' EXHIBITS 3 and 4, respectively, for identification and were thereupon received in evidence.)

By Mr. Neuman:

Q. I show you a printed item which was in one of these boxes, will you please tell us what that is?
(Document shown to the witness.)
A. This is literature describing the contents of the box and its use, how the mother should use the item.

Q. Is that placed in both the large and the small boxes?

A. Yes, it is, yes, sir.

Mr. Neuman: May I mark that as an additional exhibit, Plaintiffs' Exhibit No. 5?

(Which said document was so marked PLAINTIFFS' EXHIBIT No. 5 for identification and was thereupon received in evidence.)

By Mr. Neuman:

Q. When did you first become acquainted with this "Hungry Piggy" device?

A. March of 1948.

Q. And who showed it to you, Mr. Trager?

A. Mr. Nudelman.

Q. And what was the purpose of his showing this to you?

A. He wanted someone to finance it and put it out for sale and he thought I might be interested in the item and he would work on a royalty basis.

Q. Had you been in such a business prior to that time?

A. No, I had not, the only thought is he came to me with some mutual friends and they thought that I could organize a sales organization to promote an item of this nature. I had been in selling but not in toys.

Q. What was your business prior to March, 1948?

A. Hospitalization, Associated Hospital Service.

Q. When did you decide to manufacture and promote the sale of the "Hungry Piggy" device?

A. Well, after I had taken the item around to get some public reaction, I decided in April that I would go ahead with the item and, I would say it was about the 15th of April that we arrived at an oral agreement for me to handle this item.

Q. Is that the year 1948?

A. It was, yes.

Q. Do you know what the date of the license agreement with Mr. Nudelman was?

A. Yes, the written agreement was made on May 12th, 1948.

Q. After you had made an oral agreement with Mr. Nudelman, what was the first thing that you did to promote the sale of this device?

A. Well, I had—he had several of these models made up and I had two men feel the trade out with reference to their reaction to an item of this nature or whether an

item of this nature had ever been on the market and then I subsequently went ahead with details for ordering a permanent mold and boxes and et cetera and putting the item out.

Q. Did you have some additional models made up?

A. Yes, I had the C. A. S. Plastic Company make
26 up, all told I would say, around 300 models for me.

Q. What was done with those models?

A. They were distributed by these men as well as by myself to various organizations, buying organizations for reaction and for orders.

Q. When was it that your permanent mold was ordered?

A. Well, I contracted for it, I believe it was May 13th, the day after the license agreement was signed, I contracted with Superior Plastics.

27 Q. When were your first orders for this device taken?

A. They were taken prior, in April and May orders were taken for August delivery.

Q. When were deliveries actually made?

A. The end of September.

Q. What was the reason for that delay?

A. It was probably in constructing the molds. The mold was not completed on the date it was promised.

Q. Have you, at my request, had a tabulation of the sales of this device prepared?

A. I have.

(Document handed to counsel.)

Q. How was this tabulation prepared, will you please tell the Court?

A. This tabulation was taken from our books and records of sales at the office by our bookkeeper.

Mr. Neuman: If your Honor please, I would like to mark and introduce the tabulation of sales as Plaintiffs' Exhibit 6.

The Court: Any objection?

Mr. Threedy: The only thought in my mind is that it is a little premature as I presume this evidence is tending to show the alleged commercial success.

The Court: Yes, but it does not make much differ-
28 ence as to what order he puts it in.

Mr. Threedy: No, that is right.

The Court: It may be admitted.

(Which said document, so marked PLAINTIFFS' EX-

HIBIT No. 6 for identification, was thereupon received in evidence.)

The Court: Are these dollars or cents, counsel?

Mr. Neuman: Those are units, sets.

By Mr. Neuman:

Q. In view of the Court's question, Mr. Trager, will you convert approximately into retail dollars what that number of sets represents?

A. Oh, between a hundred and a hundred and ninety-five thousand—between $180,000 and $185,000.

Mr. Threedy: I wish to offer an objection to the testimony if it is referring to the sets, because the patent is not to the set but only to one element of the set and I think it is entirely immaterial.

The Court: I do not see how it makes much difference one way or the other. Your point is that it represents more than the patent element in the suit?

Mr. Threedy: That is correct.

The Court: All right.

29 By Mr. Neuman:

Q. Well, Mr. Trager, how do you advertise the sets?

A. We circularize the trade by direct mailing, and the enclosure of brochures and literature and we advertise in trade magazines and in addition we have a promotional deal with department stores throughout the country where we allow 10 per cent off the price for advertising and they submit tear sheets of their advertisements to us.

Q. I show you what purports to be a photograph and I will ask you to explain what that is.

(Document handed to the witness.)

A. This is a photograph of the content of the box, as well as the hangar, the piggy box itself. It is what we term a glossy print and shows the item and what our retail price is.

Q. Is that a photograph of a circular?

A. This is, yes.

Q. Have you any of those original circulars?

A. We may have some in the office, I don't know, I think they were all mailed out.

Mr. Neuman: I would like to mark and offer this in evidence as Plaintiffs' Exhibit No. 7, the photograph which has just been identified by the witness.

30 The Court: Any objection?

Mr. Threedy: I wish to make the same objection, at the same time, on all of this interrogation pertaining to the sets, and the objection is that it is immaterial as the patent, as to the structure, is on only one element of the set and not the entire set.

The Court: It may be admitted and the record will show your objection.

(Which said document was marked PLAINTIFF'S EXHIBIT NO. 7 for identification and was thereupon received in evidence.)

By Mr. Neuman:

Q. I notice on this photograph, Plaintiffs' Exhibit No. 7, you show two retail prices, one of $1.39 and the other of $1.00. Will you please tell us what the two prices relate to?

A. When we originally made our plans to promote and sell this item, the large package, the five-piece set, was priced at $1.39 and the two-piece set was priced retail at $1.00.

Q. And have you maintained those prices since the inception of this device?

A. No, we have not, and as a matter of fact, all
31 orders that were accepted at $1.39 or $1.00 were rebated, or the price changed prior to the delivery date.

Q. What is the present price at which the set is sold?

A. The two-piece set retails at 79 cents and the five-piece set retails at $1.00.

Q. Will you identify this circular, please?

(Document handed to the witness.)

A. Yes, this is a circular that we used for mailing when we changed our price.

Q. That shows the new prices?

A. That is correct.

Mr. Neuman: I would like to mark this second circular as Plaintiffs' Exhibit No. 8 and offer it in evidence.

The Court: And you want the record to show your same objection?

Mr. Threedy: If you will.

The Court: All right.

(Which said document was marked PLAINTIFFS' EXHIBIT NO. 8 for identification and was thereupon received in evidence.)

By Mr. Neuman:

Q. Mr. Trager, will you tell us the reason for the reduction in prices?

32 A. As I explained, our first delivery was made on the very last day in September, and at the end of September a number of publications for the October issues are delivered, delivered in September, and as a result an ad appeared in several trade magazines showing a similar item but retailing for $1.19 and the trade canceled almost every order I had on hand and as a result it was necessary for me to make a change in price.

Q. And was that the device of the defendants?

A. Yes, it was.

Q. Which is being accused in this case?

A. That is correct.

Q. I show you what appears to be a page of a newspaper and I will ask you to explain, if you will, what that page shows?

(Document shown to the witness.)

A. This advertisement shows a picture of the "Hungry Piggy" and the bowl which is the two-piece set and retails for $1.19 which includes six cans of baby food, and this advertisement was placed by the Independent Grocers Association in their stores right alongside of the foods in their regular merchandise.

Q. Can you tell us approximately how many of these combinations were sold as the result of this advertise-

33 ment?

A. 10,000.

Mr. Neuman: I would like to mark and offer this advertisement as Plaintiffs' Exhibit No. 9 in evidence.

Mr. Threedy: May I have the same objection noted?

The Court: Yes, and the same ruling.

(Which said document was marked PLAINTIFFS' EXHIBIT NO. 9 for identification and was thereupon received in evidence.)

By Mr. Neuman:

Q. I show you a photograph and ask you to identify that photograph and explain the purpose.

(Document shown to the witness.)

A. This is a photograph of Donald O'Connor, the movie actor, and Baby Snooks, and that illustrates the use of the "Hungry Piggy" feeding, and we used it for publicity and selling.

Q. Were photographs of this character distributed for publicity purposes?

A. Yes, they were and they appeared in a great number of magazines as well as in store windows.

Mr. Neuman: I would like to mark and offer this photograph in evidence as Plaintiffs' Exhibit No. 10.

34 Mr. Threedy: Same objection.

The Court: Same ruling.

(Which said document was marked PLAINTIFF'S EXHIBIT NO. 10 for identification and was thereupon received in evidence.)

By Mr. Neuman:

Q. I show you a photostat of what appear to be newspaper clippings or portions of newspapers and ask you to identify that document and explain what it shows.

(Document handed to the witness.)

A. The item on the left appeared in the Chicago Sun-Times in their column called "Tops for Today," that is a column in which the author picks out an item that he believes is new or an innovation in any particular field, and that item there appeared in the Philadelphia Daily News. Both appeared in the month of October, 1948.

Mr. Neuman: I would like to mark and offer in evidence as Plaintiffs' Exhibit No. 11 the photostat which has just been identified by the witness.

Mr. Threedy: Same objection.

The Court: Same ruling.

(Which said document was marked PLAINTIFFS'
35 EXHIBIT NO. 11 for identification, and was thereupon received in evidence.)

Mr. Neuman: That is all of the direct examination.

*Cross-Examination by Mr. Threedy.*

Q. Mr. Trager, in all of the advertisements concerning which you have testified, were those advertisements of the complete sets as exemplified by Plaintiffs' Exhibits 3 and 4?

A. Yes on the advertisements.

Q. Now, did the plaintiff company, to your knowledge, ever sell separate and apart from the bowl the pig-shaped funnel?

A. It was offered separate and apart, but never sold separate and apart.

Q. It was never sold separate and apart?

A. No, sir.

Q. In other words, all of the sales made by the plaintiff company included the pig-shaped funnel as a part of the set, including all of the other elements, is that correct?

A. That is correct.

36 Q. Now, you referred to the photograph marked Plaintiffs' Exhibit No. 10, was there any compensation paid to the characters illustrated in that photograph for posing for the same?

A. No, there was not.

Q. In other words, that was done "gratis"?

A. That is correct.

Mr. Threedy: No further cross-examination, your Honor.

Mr. Neuman: No questions.

The Court: That is all, you may step down.

(Witness excused.)

DOROTHY SCHARLE, called as a witness on behalf of the Plaintiffs herein, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Neuman.*

Q. Will you please state your name and address?

A. Dorothy Scharle, 520 North Avenue, Lake Bluff, Illinois.

Q. Are you in business, Miss Scharle?

A. I am.

37 With Nat Gavender, Incorporated.

Q. What is your position with Nat Gavender, Incorporated?

A. I am Vice-President and merchandise manager.

Q. Will you tell us briefly—tell the Court what the business of Nat Gavender, Incorporated is.

A. We represent a large group of specialty and department stores on an annual retainer basis and it is our function to seek out new items for those stores and we also buy for them.

Q. Do I understand that you find an item and then you contact your client and propose to that client that they purchase the item and sell it to the stores?

A. That is right.

Q. And in other instances you actually buy at their

request, that is, they request you to buy something for them?

A. Yes, sir.

Q. How long have you been with Nat Gavender, Incorporated?

A. Six years.

Q. By whom were you employed prior to your employment by Nat Gavender, Incorporated?

A. Butler Brothers.

Q. What position did you hold at Butler Brothers?

38 A. I was secretary to the Voluntary Chain Manager.

Q. Will you explain what the Voluntary Chain Manager is and what he does?

A. The Voluntary Chain Manager is the gentleman who heads the Ben Franklin and Federated Stores in the Chicago area.

Q. And would you sell through those stores?

A. Yes, the Federated Stores are a subscribers type of business, and the Ben Franklin Stores would be the five to one-ninety-five type of operation.

Q. And do they sell a variety of items?

A. Yes, sir.

Q. And are you acquainted with the "Hungry Piggy" device?

A. Yes, sir, I am.

Q. Can you tell the Court whether or not Nat Gavender, Incorporated has proposed the purchase of this device to clients of Nat Gavender, Incorporated?

Mr. Threedy: I object to that as being leading, if your Honor please.

The Court: Well, we may as well save time, we all understand what he is trying to get at. She may answer the question.

39 By the Witness:

A. Yes, sir, I have.

By Mr. Neuman:

Q. Can you tell us some of the clients that have followed your advice and have purchased the "Hungry Piggy" device?

A. Gimbels of New York City; Goldsmith of Memphis, Tennessee; D. H. Holmes, New Orleans, Louisiana; The Broadway Department Store of Los Angeles; Gould & Company of Lincoln, Nebraska.

Q. Miss Scharle, to your knowledge, was there available on the market prior to the summer of 1948 a psychological or utility toy offered to the retail trade for or in connection with feeding toys for children?

A. No, sir.

Q. That is, devices for children?

A. No, sir, there was not.

Q. Can you tell us if you know what was being offered prior to the summer of 1948 in connection with either toys or accessories for the feeding of infant children?

A. They did have an advertisement of drinking cups and spoons and forks with a child-like character on the end, and then they also had the round dish device that was decorated with nursery figures painted on that held hot water so as to keep the food warm for the child.

Mr. Neuman: That is all.

Mr. Threedy: I just have one question, if your Honor please.

The Court: All right.

*Cross-Examination by Mr. Threedy.*

Q. I believe you testified on direct examination, Madam, that you advised customers to handle the "Hungry Piggy," is that right?

A. I suggested it to them.

Q. You suggested that they handle it?

A. Yes, sir.

Q. And when you made the suggestions you had reference to the complete set such as exemplified by Plaintiffs' Exhibits 3 and 4, is that correct?

A. Yes.

Mr. Threedy: No further cross-examination.

Mr. Neuman: That is all.

The Court: Call your next witness. You may step down.

(Witness excused.)

41 GLADYS GERBER, called as a witness on behalf of the Plaintiffs herein, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Neuman.*

Q. Please state your name and address?

A. Gladys Gerber, 928 Agatite.

Q. Do you have any children, Mrs. Gerber?

A. Yes, sir, I have two little boys, one 20 months old and one is five years old.

Q. Are you acquainted with the "Hungry Piggy" device?

A. Yes, sir, I am, I have had quite a few feeding problems with my first child, and when the second one came along it was just about the time this little gadget was popular and I purchased it at Marshall Field's, and it seemed to amuse him when I used to feed him and the pig at the same time. He never fed himself because at seven or eight months a baby is not going to feed himself and we have not had a feeding problem because I think it is a wonderful thing for feeding, feeding my little boy.

Mr. Threedy: I suggest that the witness's testi-
42 mony that the thing became popular be stricken, if your Honor please.

The Court: Yes, that may go out.

Mr. Neuman: Just that part of it?

The Court: Yes, just that part of it and tell the witness just to answer the question.

By Mr. Neuman:

Q. Please tell the Court whether you have found the "Hungry Piggy" device to be of help and useful to you in connection with the feeding of your youngest child.

A. Well, he is eating the cereals better than the first one did, and that is all I can say, it occupies his interest.

Mr. Neuman: That is all.

The Court: Do you want to ask this lady any questions?

Mr. Threedy: No cross-examination.

The Court: You may step down.

(Witness excused.)

Mr. Neuman: Shall we go ahead?

Mr. Threedy: If your Honor please, to accommodate

Mr. Neuman we have notified Mr. Eliot to be present, and Mr. Eliot's wife has been under hospital care and it is quite inconvenient for him to appear at any time. When can we have him come back?

43 The Court: How long will his testimony take?

Mr. Neuman: Not long.

The Court: All right, we will accommodate Mr. Eliot.

SOL S. ELIOT, called as a witness on behalf of the Plaintiffs herein, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Neuman.*

Q. Will you please state your name, residence and occupation?

A. Sol S. Eliot, 1423 Sherwin Avenue, Chicago, general manager and partner of Crest Specialty Company.

Q. You are one of the defendants in this case, are you not?

A. I am.

Q. What is the business of the Crest Specialty Company?

A. We manufacture a number of specialties of wire, metal and plastic.

Q. Do you specialize in children's amusement devices?

A. We have been and we have other children's amusement devices—let me put it this way, I will amend

44 that answer—we have an infant feeding item.

Q. Mr. Eliot, how long have you been in this business that you are now engaged in?

A. About twenty years.

Q. Have you been familiar, during that twenty years, with the items which were being offered as feeding accessories or feeding toys?

A. Yes, I think I am familiar with them during that time.

Q. When did your company first place the "Puppy Tu" on the market?

A. We offered it for sale in July, 1948.

Q. Prior to July, 1948, had you personally checked the market to determine whether or not there would be acceptance for a device of this character?

A. Yes, I had.

Q. What was the nature of that survey and check?

A. Well, we were interested in an infant feeding item and we were attempting to incorporate that as a matter of appeal, something other than just a utility matter, that is the important feature of feeding.

Q. I would like to know the nature of your survey, what you did, how extensively you did it in trying to find out if such a device was acceptable.

45 A. Well, number one, we developed the model, after some development and evolution, such as you see there, the "Puppy Tu," and we then had Mr. Threedy, our attorney, make a survey at the Patent Office to see whether we would be permitted to make an item of this type, and I then proceeded to New York to make a number of calls on it.

Q. Did you find there was or was not any demand for a device of this character?

A. There seemed to be a demand.

Q. Was there a large demand or a small demand as you found it?

A. I would say just a moderate demand, just a moderate demand.

Q. Did you find that there was a substantial demand?

A. It is pretty hard to determine the word "substantial," but I thought there was a sufficient demand to go ahead with the item and invest in molds.

Q. Will you tell us what you did by way of your initial investment in your molds, and in getting under production, to endeavor to sell this item, in dollars, round dollars?

A. You are asking how much money we had invested in this item?

Q. When you started.

46 A. When we started, when we started we had nothing invested, we contracted for the molds and ordered our material and so forth.

Q. About how much did you have invested after you started, say in August or September of 1948?

A. In August I do not believe we had anything at that time.

Q. What I am trying to get at, how much money did you actually invest in this item?

A. It is pretty hard to say, I could not answer that offhand as we have a number of items and it is rather difficult for me to say what this particular item represented in dollars or cents per thousand.

Q. Would you say it was as much as $30,000?
A. I think it was under that.
Q. What?
A. I think it was under that.
Q. Is that a high figure?
A. Yes, I believe that is a high figure for that item.
Q. Did you, at the time of your survey and check of the market, form any estimate as to the number of devices like that "Puppy Tu" you could sell?
A. I thought we could sell approximately fifty to
47 sixty thousand.
Q. A year?
A. Well, the first year, anyway, because these things do not hold up too long.
Q. A year?
A. The first year.
Q. Did you estimate you could sell 90,000 a month?
A. No, it would be hard to produce 90,000 a month because you would have to manufacture sixty different molds to do that.
Q. Well, you are the same Sol S. Eliot that made an affidavit and filed it in the Patent Office in the prosecution of the Manaster patent, are you not?
A. Yes, sir, I am.
Q. And you made that affidavit under date of August 2nd, 1948?
A. Yes.
Q. I show you a photostatic copy of that affidavit and ask you whether on this photostatic page there is a reproduction of your signature?
(Document handed to the witness.)
A. Yes, that is correct, that signature is mine.
Q. Will you follow me on the reading as I wish to read to you a statement which you made at the time
48 in that affidavit, referring to the petitioner which was the Crest Specialty Company:

"Said petitioner is ready, willing and able to manufacture and sell the device of said application; that said petitioner has produced samples of said device and submitted the same to the trade and it appears thereby that there is a market for the said device and that said device can be sold and distributed and otherwise put into commerce in large numbers, to-wit, 90,000 per month, and that in order for petitioner to manufacture and sell its devices it will be obliged to expend a large sum of money, to-wit,

about $20,000 for the necessary injection molds and other tools, dies and jigs, and the like, and $35,000 in advertising, making a total of at least $55,000 as an initial investment and expenditure in marketing said device."

Do you remember making those statements in that affidavit?

A. Yes, sir.

49 Q. Were those statements true?

A. They were true to the best of our ability to determine at that time, yes, that was the proposed investment not the amount spent.

Q. You did estimate you could sell about 90,000 a month?

A. Yes, for the next few months.

Q. I show you an advertisement which appeared in "Toys and Novelties" for October, 1948, at Page—I believe it is Page 41—is that an advertisement which was put into that publication by your company, the Crest Specialty Company?

(Document handed to the witness.)

A. Yes, it was.

Q. And it relates to the "Puppy Tu" device?

A. Yes, sir.

Mr. Neuman: If your Honor please, I would like to mark this advertisement as Plaintiffs' Exhibit No. 12 and offer it in evidence, and inasmuch as I have to return this I would like to have leave to withdraw this and substitute for the exhibit photostatic copies of this page.

Mr. Threedy: No objection.

The Court: Any objection to that?

50 Mr. Threedy: No.

The Court: It may be admitted with that understanding.

Mr. Threedy: Will you furnish me with a copy of it?

Mr. Neuman: Yes.

By Mr. Neuman:

Q. That same ad appeared in other publications, did it not?

A. It might have, I do not recall the exact program.

Q. I have here Earnshaw's Infants, Childrens and Girls Wear.

(Document handed to the witness.)

Q. I show you an advertisement in the October, 1948,

edition, is that the same as the one I have previously shown to you?

A. Yes.

Mr. Neuman: That is all with this witness.

*Cross-Examination by Mr. Threedy.*

Q. Just one or two questions.

You stated on direct examination that before the defendant company did anything in connection with the production or sale of "Puppy Tu" as exemplified by
51 Plaintiffs' Exhibit No. 2, you had me make a search of the Patent Office records, is that correct?

A. Yes, sir.

Q. Will you tell the Court whether or not I made a report to you on that search?

A. The report was made and in it you cited the Israel Smith patent.

Mr. Neuman: I object to the witness describing it.

Was it a written document, that report?

The Witness: It was in the form of a letter.

Mr. Threedy: We will produce the letter if you wish, if you want to save time we will produce it.

The Court: I do not see that it makes any difference, let him answer the question.

To save time, you made the search of the Patent Office?

Mr. Threedy: Yes, and the Smith patent is the Smith patent that I discussed in my opening statement to the Court this morning.

By Mr. Threedy:

Q. Is it not?

A. Yes.

Q. Did the plaintiff company ever offer to sell to the trade or advertise the funnel-shape for sale, separate
52 and apart from the set?

The Court: You said "plaintiff company." Did you mean that?

Mr. Threedy: No, the defendant company.

The Court: Are you the plaintiff in the other law suit?

Mr. Threedy: No, sir, I am the defendant there, too, but I just got through a matter where I was the plaintiff.

By Mr. Threedy:

Q. Have you answered that question?

A. No, sir.

Q. And the advertisements you referred to, did such advertisements include the complete set of "Puppy Tu" which included the bowl and everything?

A. The set included the bowl, fork, spoon, case and everything in all cases, and was never offered separately.

Mr. Threedy: That is all.

*Redirect Examination by Mr. Neuman.*

Q. After you got Mr. Threedy's report you went ahead and filed a patent application, did you not?

53 A. I believe Manaster filed the patent application.

Q. Will you tell us whether or not Ben B. Manaster, who represents himself as patentee in Patent No. 2,453,922, is one of the defendants in this case and is a partner in Crest Specialty Company?

A. Yes, he is a partner in Crest Specialty Company, that is correct.

Mr. Neuman: That is all with this witness.

The Court: Any questions?

Mr. Threedy: No.

The Court: You may step down.

(Witness excused.)

Mr. Neuman: I want to offer in evidence as a part of my case the Manaster patent and the file wrapper of the Manaster patent, the Manaster patent as Plaintiffs' Exhibit 13 and the file wrapper as Plaintiffs' Exhibit 14.

The Court: Any objection?

Mr. Threedy: No objection.

(Which said documents were marked PLAINTIFFS' EXHIBITS NOS. 13 and 14, respectively, for identification, and were thereupon received in evidence.)

54 The Court: We will adjourn this case now until Monday morning at 10:15 o'clock.

(Whereupon an adjournment was taken in the above-entitled cause until Monday, October 24, 1949, at the hour of 10:15 o'clock a. m.)

55 Monday, October 24, 1949,
10:00 o'clock a. m.

Court met pursuant to adjournment.

Present:

Mr. Sidney Neuman,
Mr. Max R. Kraus,
Mr. Clarence E. Threedy.

56 The Clerk: David C. Trager *versus* Crest Specialty, on trial.

The Court: Whenever you are ready, gentlemen.

Mr. Neuman: I have one short witness, he was not here the other day and was not sworn.

The Court: Will you swear the witness?

(Witness sworn.)

MORRIS N. GOLDMAN, a witness called on behalf of the Plaintiffs herein, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Neuman.*

Q. Please state your name.

A. Morris N. Goldman.

Q. Your address?

A. 1015 Russell Avenue North, Minneapolis, Minnesota.

Q. Occupation?

A. I am interested in several businesses.

Q. Are you acquainted with Mr. Trager who is the plaintiff in this case?

A. Yes, sir, I am.

57 Q. Are you associated with Mr. Trager?

A. Yes, we have been associated for about a dozen years, in various businesses.

Q. Are you acquainted with Mr. Ben B. Manaster, one of the defendants in this case?

A. Yes, sir, I am.

Q. Have you ever had any conversation with Mr. Manaster with respect to the "Hungry Piggy" feeding set and the "Puppy Tu" feeding set?

A. Yes, I have.

Q. Would you fix the approximate date of that conversation, the place where it was held and also tell us who was present at the time of the conversation.

A. Well, the place was the Covenant Club in Chicago, the time was—well, the exact date I do not know, but it was approximately between the 25th and 30th of August, 1948, or possibly it may have been between the 8th and 12th of August.

The reason I specify those dates is that I am in Chicago two times a month, usually between the 8th and 12th and 25th and 30th and it is, I might say, an invariable schedule.

Q. Tell us who were present.

A. There were a lot of club members there, we
58 were on the sixth floor, the lounge, where there were a lot of club members, I can give you some of the names, I do not know whether that will make any difference, do you want the names?

Q. Of the persons who were present and heard the conversation, if you can recall it.

A. I do not recall anyone that heard the entire conversation. I can recall a few names of some few who heard me start to talk.

Q. Name them.

A. Arthur Freed was one, then there was one particular member who knows a little more about the discussion because he drove me to my hotel after I left the club and I told him about it, Eli Marcus.

Q. Tell us, to the best of your ability, and recollection, the substance of what you said and the substance of what Mr. Manaster said in this conversation.

Mr. Threedy: I object to any conversation that Mr. Manaster had, I think that is not proper under the rules.

The Court: What is the theory under which you want to introduce it?

Mr. Neuman: He is the defendant and we wish to show an admission made by Mr. Manaster. He is a defendant in the case and he is a party to this action.

59 The Court: What is wrong about that?

Mr. Threedy: I think it is hearsay, your Honor.

The Court: Hearsay?

Mr. Threedy: Hearsay evidence, yes.

The Court: He is talking to one of the defendants himself.

Mr. Threedy: He is going to recite a conversation of what the defendant said and I think that what Manaster said, I think that should be brought out through Mr. Manaster himself and not through this witness.

The Court: Objection overruled, I take it the conversation has something to do with this litigation?

Mr. Neuman: Yes.

The Witness: What is the question?

Mr. Neuman: Read the question.

(Question read.)

By the Witness:

A. It started when I was talking to Arthur Freed about a different matter and during the conversation I told him I was not interested in what he had to offer, because I was interested in "Hungry Piggy."

Mr. Threedy: I object to that part of the conversation had with Mr. Freed, if your Honor please.

The Court: I thought this conversation was with
60 Mr. Manaster.

Mr. Neuman: This is preliminary, your Honor.

The Court: All right.

The Witness: I thought I was to relate the entire story.

The Court: No, not that part with Mr. Freed, that goes out.

61 The Witness: Well, I am telling about the "Hungry Piggy" set, and Mr. Manaster, who was sitting two or three feet away, comes over and says, "I am making that set."

I said, "You are making that set?" I said, "That is impossible, we have got a patent on that set."

He said, "No, you haven't."

"Well," I said, "I am sure we have, Ben too."

He said, "There is no patent on the item," and so then, rather than carry on a conversation between him and myself in front of several of the members, we went over to the side table and I said, "Ben, I am a little perturbed, I don't understand, you are making this set, how you happen to be making it."

He said, "An advertising agency in New York showed me the 'Hungry Piggy' set," and he was now making it but instead of a "Piggy" set it was a "Puppy" set.

Mr. Threedy: If the Court please, I wish to strike that part about the advertising agency in New York.

The Court: This is conversation with your client.

Mr. Threedy: I think he has stated that conversation, if the Court please, he can state what the conversation was between Mr. Manaster and himself but not between Mr. Manaster and somebody else.

62 The Court: He is still relating conversation had with Mr. Manaster. The motion is overruled.

Is that all?

The Witness: Well then I said to Ben, Mr. Manaster, that I was sorry to hear about it. He said well, he was sorry, he said, "How are you interested?"

He said, "I thought you were in a different business."

I mentioned one of my partners was interested in this thing, therefore I was interested. He said if he had known it was mine he wouldn't have gone into it.

I thereupon said to Ben, I said, "Ben, why don't we get together and discuss this thing?"

He said, "Fine, I will call you, maybe Mr. Trager and you and I will have lunch," with him the next day.

By Mr. Neuman:

Q. Did you have any further conversations with Mr. Manaster?

A. For the next three or four days, I saw him at the club the day after, he said he was sorry, he meant to call but something came up but he would call me the next day; a day or two later I saw him again at the club and he said he had to take his mother to a funeral.

63 The Court: Did you have any further conversation with him about this matter?

The Witness: No.

Mr. Neuman: That is all.

Mr. Threedy: No cross-examination of this witness, if the Court please.

(Witness excused.)

Mr. Neuman: In closing our case, if your Honor please, I wish to have marked as an exhibit an illustrated chart or an illuminating chart which I have had entitled "Plaintiffs' Chart Showing Infringement of Claim 3 of the Nudelman Patent."

I wish to further explain that I have shown upon this chart Fig. 3 of the Manaster patent, No. 2,439,22 and have removed therefrom the reference numerals which appear in the patent drawing.

I show that figure as illustrative of the accused device in this law suit.

Mr. Threedy: If your Honor please, as counsel states he is going to use this chart for argument, we will object to it on the ground there has been no proper foundation laid for it.

We have never seen the chart before, we don't know whether it is a correct interpretation of whatever
64 it is supposed to represent, but if I understand correctly, if counsel merely wishes to use it for the purposes of argument, we have no objection to that.

However, we are not admitting by that statement it is a correct illustration or that we are bound by anything that the chart contains.

The Court: Without any further showing, why is this chart competent as an exhibit?

Mr. Neuman: Your Honor, infringement is proved by putting the patent in evidence and putting the accused device in evidence and sometimes it becomes necessary to call an expert witness and go through the Sworn argument procedure of having that expert witness read the claim upon the accused device.

In this case I don't think that is necessary; in this case I have taken our claim and serialized it and applied it to the accused structure.

The Court: That is what you say you have done and that is what he is objecting to, you have no showing here under oath as to what you say has happened.

Mr. Neuman: I had this prepared under my own direction.

The Court: I understand that, still it does not become evidence, does it, merely because you state that?

Mr. Neuman: I don't think so but then what I want
65 to do is offer it as an illustrated and argumentative chart.

The Court: If you are just going to use it for your argument, he says he has no objection to it, but he does object to it as a regular exhibit, isn't that correct?

Mr. Threedy: That is correct, your Honor.

The Court: Anyway we are wasting time, you can use it in your argument and you can have it here and look at it.

Mr. Neuman: That closes our case in chief.

The Court: All right.

(Thereupon plaintiffs rested their case in chief.)

(Thereupon defendants to maintain the issues on their part introduced the following evidence, to-wit:)

Mr. Threedy: If your Honor please, I have here a book of prior art patents which I will ask the reporter to mark. Mark it Defendants' Exhibit No. 1.

(Said document was marked Defendants' Exhibit No. 1 for identification.)

66 Mr. Threedy: This book contains, if your Honor please, soft copies of the following patents. I will refer to them by their numbers, 226,831, 356,168, 842,024, 1,751,773, 2,207,417, also for the Court's convenience it contains a copy of the patent in suit.

I would like to offer this book in evidence as Defendants' Exhibit No. 1.

The Court: Those are the prior art patents supporting your position?

Mr. Threedy: That is correct, your Honor, yes.

The Court: Any objection?

Mr. Neuman: No.

(Which said document, so marked DEFENDANTS' EXHIBIT NO. 1 for identification, was thereupon received in evidence.)

Mr. Threedy: Shall we just retain it, or—

The Court: You had better retain it.

Mr. Threedy: At this time, if your Honor please, I would like to call as a witness for the defendant, Mr. Snow.

67 WILLIAM A. SNOW, called as a witness on behalf of the Defendants herein, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Threedy.*

Q. State your name, address, age, business and business address.

A. My name is William A. Snow, 4958 North Tripp, Chicago, Illinois, my home address; my business address is 7 South Dearborn Street; I am a patent lawyer and I have been associated with my present firm, Rummler, Rummler & Snow, for the past twenty-five years.

Q. You are a member of the Bar of the State of Illinois, Mr. Snow?

A. I am.

Q. Are you registered as a patent attorney and lawyer in the United States Patent Office?

A. I am.

Q. How long have you been registered as a patent lawyer in the United States Patent Office?

A. Since 1931.

Q. As a registered patent lawyer, Mr. Snow, what
68 has been in general the nature of your business?

A. I have done everything in a patent organization, that an organization of our size has done in connection with patents, that is, prosecution, preparation and prosecution of patent applications, rendering patentability searches, infringement searches, validity searches, handling of litigation for both the plaintiff and for the defendant.

Q. Have you ever testified as an expert in patent cases before, Mr. Snow?

A. Yes, I have.

Q. When was the last case you testified in as an expert?

A. The last case was before the Hon. John P. Barnes of this Court in the case entitled Madison Patents Corporation. There were five suits, four suits I believe there was, filed by the Madison Patents Corporation and they were consolidated for trial and tried as one case in April of this year.

Q. Is there anything you would like to say, Mr. Snow, that might have a bearing upon your qualifications, to enable you to testify as a patent expert in patent cases?

A. I believe I am qualified in that I have been performing patent work and patent opinion work and that sort of thing for many, many years and in addition thereto
69 I have taught patent, trade mark and copyright law at the John Marshall Law School in Chicago.

Mr. Neuman: When was he admitted?

When were you admitted to the Illinois Bar?

The Witness: 1944.

By Mr. Threedy:

Q. Do you have a copy of the Smith patent No. 2,207,417 dated July 9, 1940?

A. I do.

Q. Have you read and examined the Smith patent in question?

A. I have.

Q. You understand the construction and operation of the device shown therein?

A. I have and I do.

Q. Do you have a copy of the Nudelman patent No. 2,455,266, in suit?

A. I have.

Q. Have you read and examined that patent and do you understand the construction and operation of the device shown in that patent?

A. I do.

Mr. Threedy: May I ask the reporter to mark this chart for identification as Defendants' Exhibit No. 2?

70 (Said document was marked Defendants' Exhibit No. 2 for identification.)

By Mr. Threedy:

Q. Mr. Snow, I hand you this chart which has been marked for identification as Defendants' Exhibit No. 2 and ask you to examine the same and state whether or not you can identify it?

(Document handed to the witness.)

A. I can, this is a chart which was prepared under my supervision and at my request which illustrates that—I have a copy, your Honor, would you like to look at it?

Mr. Threedy: I have a copy.

By the Witness:

A. That is an exhibit in the case which illustrates on here in the upper lefthand corner Figure 5 of the Nudelman patent in suit. It was taken directly out of the patent in suit.

On the lefthand side I have the illustrated Figure 4 of the Smith patent.

The Court: Lefthand side or righthand side?

The Witness: Righthand side, your Honor, I am sorry, the righthand side is the Smith patent and the lefthand side is the patent in suit.

71 By the Witness:

A. I have colored the bowl with the color blue and the hopper or figure, if you want to call it such, in red.

Below, in the center of the page, I have Claim 2 of the Nudelman patent in suit typed and broken down into elements and on the lefthand side of the broken down claim I have indicated the numerals which appear in the drawings, in the lefthand side the numerals relate to the Nudelman patent Figure 4, and on the righthand side the numerals relate to the Smith patent, 2,207,417, with the one

exception of the use of the numeral "M" or we will say the letter "M" and the letter "P", which refers to the Smith patent, otherwise the numerals appear there as shown in the patent in suit and the Smith patent.

Mr. Threedy: I will ask the reporter to mark this cereal bowl for purposes of identification as Defendants' Exhibit 3.

(Said article was marked Defendants' Exhibit No. 3 for identification.)

Mr. Threedy: I also ask the hopper be marked for identification as Defendants' Exhibit No. 3-A.

72 (Said article was marked Defendants' Exhibit No. 3-A for identification.)

By Mr. Threedy:

Q. Mr. Snow, I hand you the cereal bowl marked for identification Defendants' Exhibit No. 3 and also the hopper marked for identification Defendants' Exhibit 3-A and ask you to state if you can identify those exhibits.

(Articles handed to the witness.)

A. Defendants' Exhibit No. 3 is an ordinary cereal bowl which was purchased on the open market, and the Defendants' Exhibit No. 3-A is a model which was made at my direction and under my supervision to illustrate Figure 4 of the Smith patent, 2,207,417, and I believe it is a correct representation of that figure.

Q. Now, by means of the chart, Mr. Snow, Defendants' Exhibit No. 2, and the cereal bowl and hopper, Defendants' Exhibit Nos. 3 and 3-A for identification, will you explain and compare the device of Claim 2 and that shown in Fig. 4 of the Smith patent, 2,207,417?

A. Will you please read the first part of that?

(Question read.)

A. Referring to Defendants' Exhibit No. 2, your

73 Honor, which is this chart, I have handed you, every element of Claim 2 as is shown in this chart is found in both the patent in suit and the Smith patent, particularly the Smith patent which I believe is—shows everything called for in Claim 2 and thereby completely anticipates Claim 2.

Mr. Neuman: If your Honor please, I object to that answer. The function of the Court is to determine whether or not there is any anticipation here. As I understand, the province of an expert, he merely explains terms of art and explains structures to your Honor, but he cannot

come in here and give his opinion as to the vital issues in the case.

I think Mr. Snow should be confined to explanations of the structures.

The Court: I think that objection is well taken. He can compare the structures.

The Witness: That I will do, your Honor.

Referring to the chart and taking them element by element, an amusement device, comprising the first element which this claim contains is the figure, the phrase "formed to simulate a living creature," although those words are in there, I don't believe it changes the function of the de-
74 vice in any way, so I am just going to refer to it as a figure.

Mr. Neuman: I object to that, if your Honor please, the claim as issued to us by the Patent Office used in it as an element a figure formed to simulate a living creature.

The Court: I understand that.

Mr. Neuman: He is now reading that out of the claim.

The Court: He admits that the exhibit shows he reads it out. Go ahead.

The Witness: The figures shown in the Nudelman patent in suit by the numeral 10 which your Honor will see just below the numeral 20 on the righthand side of the drawing, generally indicates the entire figure. In the Smith patent our numeral 10′, appearing at the upper end of the hopper, is generally used to indicate the figure.

Mr. Neuman: If your Honor please, I am not interrupting on account of his answer, but I made an objection before when the witness used the expression "completely anticipated." I don't know whether in view of the objection I made and the fact that your Honor agreed with me, with my objection, whether that means that characterization by the witness has to go out.

The Court: Yes, it does mean that.

75 Mr. Neuman: All right.

The Court: All right, let us proceed.

The Witness: The next part of that claim reads: "Said figure comprising a body portion adapted to be placed exterior of the feeding bowl."

Now, the body portion is indicated by the numeral 16 in the Nudelman patent, the lefthand figure, it is the last figure, the last numeral shown on the drawing as the lowest part of it and on the Smith patent the body portion

is indicated by the numeral 12′ or by the numeral 23, or by both of them.

Both of these parts, indicated by 12′ and 23, are adjacent to the exterior of the feeding bowl which is indicated by the numeral 22, in the Nudelman patent, and by the numeral 6′ in the Smith patent.

"Said body portion having a forwardly extending portion," a forwardly extending portion in the Nudelman patent in suit, Figure 5, as indicated by the numeral 27; that 27 appears just to the right of the bowl on the right-hand side of the portion in red, and in the Smith patent it is indicated by the numeral 16 which is on the lefthand side of that drawing and the lead line runs to the right portion through the blue.

Do you find it, your Honor?

76 The next part of that claim reads: "adapted to extend closely adjacent to and overlie a portion of said bowl."

The part 16 in the Smith patent is adapted, that line—rather, I should say, extends closely adjacent to and overlying the portion of the bowl—

In the patent in suit it is obvious that the portion marked 32—wait a minute, I am sorry, I am too far—the portion marked 27 is adapted to extend closely to and overlie a portion only of said bowl.

The next element of the claim is that said "forwardly extending portion having a simulated mouth."

In the Smith patent in suit—in the Nudelman patent in suit, the mouth in indicated by the numeral 32 it is right under the nose of the pig.

The Court: I see it.

The Witness: In the Smith patent, 2,207,417, it is indicated by the letter "M," being that portion thereof, and the next element is "having a passage," the passage is indicated by the numeral 24 in the Nudelman patent in suit and in the Smith patent it is indicated by the letter "T."

"Said passage having walls extending solely downwardly," the walls in this instance are the walls 25,

77 indicated in the Nudelman patent, the 25 which is right above the figure 5, and in the Smith patent the walls is indicated by the numeral 14 appearing in the middle of the red portion.

Reading the claims further, it says, "The walls extend-

ing solely downwardly from said mouth through said forwardly extending portion whereby the contents of a spoon may be emptied through said simulated mouth and fall by gravity into said feeding bowl."

It is obvious from the drawing that any contents that are placed in through the mouth of either one of these devices, enters through the mouth and will flow downwardly through the forwardly extending portion and into the bowl by gravity.

The last element is "Said forwardly extending portion including means preventing lateral movement of said passage from said bowl."

In the Nudelman patent in suit this means is indicated by the numeral 20, which is the undercut portion, it appears right below the word "Fig." in the Nudelman patent, Figure 5, and in the Smith patent it is indicated by the numeral 22, the 22 is in the center of the chart.

By Mr. Threedy:

78 Q. Mr. Snow, state if you know what difference, if any, there is between Claim 2 and Claim 3 of the patent in suit.

A. Claim 3 is identical with Claim 2, word for word, with the exception of the following words, appearing on Page 2 of the specification of the Nudelman patent, beginning on Line 5 and ending on Line 7, these words are: "And a head secured adjacent to said forwardly extending portion and movable to permit the contents of a spoon to be emptied into said simulated mouth," End of the additional written matter.

Q. With that difference in mind, Mr. Snow, would you say that the function of the portion or Smith hopper, patent 2,207,417, would be altered, changed or modified in any respect by the addition of a head of a hog to the Smith hopper?

A. No, I do not believe the function would be changed one iota.

Q. Does the addition of a hinged head to the patent structure in any way change, alter or modify the structure of the passage of the patented device in its function of delivering food to the bowl through the passage?

A. No, it does not change the function of that
79 passage one iota.

Q. Would the addition of a hinged head to the hopper of the Smith patent, 2,207,417, in any way change,

alter or modify the function of the groove, 22, in wall portion, 23, and edge, 24, of the bowl by providing a detachable connection between the hopper and the bowl?

Mr. Neuman: Will you read that question?

(Question read.)

By the Witness:

A. No, the addition of a hinged head to the device of Figure 4 of the Smith patent would not change the function.

By Mr. Threedy:

Q. Now, I ask you that same question with respect to the patent in suit, in so far as it relates to the groove, 22, in the edge of the bowl, 20—rather, groove, 20, in the edge of the bowl, 22?

A. No, the addition of a head, a hinged head or a head, does not change the function at all.

Q. Mr. Snow, have you read the file wrapper history of the patent in suit?

A. I have.

Q. Do you understand its contents?

A. I do.

Q. Now, in your examination of that file wrapper history, what, if anything did you find contained therein
80 as indicating to what the applicant asserted to the Examiner as his contention of novelty of this invention over the prior art contained in the file wrapper?

Mr. Neuman: I am going to object to that; the file wrapper proceedings speak for themselves. I don't think this witness should be permitted to argue from statements which are found in that file wrapper. It is most unusual, as far as I am concerned in this line of work.

The Court: What is in the file wrapper speaks for itself.

Mr. Threedy: My purpose here is to find out the particular spot. I am perfectly satisfied if counsel is, but I thought it would facilitate matters if we understood what we mean when we talk about it later on.

Mr. Neuman: I always do things of that sort in argument.

The Court: Objection sustained.

By Mr. Threedy:

Q. Have you examined any of the prior art patents that have been cited in the file wrapper history of the patent in suit, Mr. Snow?

A. I have.

Q. In your opinion, based upon that examination of these prior art patents, cited by the Examiner, do they disclose a body simulating a living creature and having attached thereto a hinged head?

81 A. Yes, there are several patents that contain that function. For instance, the Bowen patent shows the figure of a dog which has a head hinged to the body, and when a coin is placed on the nose of the dog and the tail is actuated, the head will shift upwardly and the coin will tumble right off the nose of the dog and fall in a trough and when the tail is released the coin will fall, by gravity, down through the body of the dog into a receptacle.

The Livingston patent, 842,024, I don't recall whether I gave you the number of the Bowen patent, it is 226,831, granted April 27, 1880—

The Livingston patent, 842,024, granted February 5th, 1907, discloses a simulation of a horse eating at a trough and it contains an arrangement which moves about, and portions of the horse are actuated by striking the head whereby the head is oscillated around the shaft "F" and the food appears to be projected into the mouth of that horse and at the same time, because of the width of the food on the chain or cable, the trough appears to open and shut, and the head is hinged, the head is hinged to the body of the animal, so that that gives a movable head.

82 Mr. Neuman: If your Honor please, this Livingston patent, while it was in the file wrapper references cited by the Patent Office against these claims, it has not been pleaded in the answer as an anticipation.

Now, I am willing to have the witness refer to it and describe it, but I think it should be understood it is used only to show the prior state of the art.

The Court: That is all he asked him about.

Mr. Neuman: It cannot be used to anticipate our claims, here, because it has not been pleaded as an anticipation.

Mr. Threedy: I am submitting it under the rules announced by the Circuit Court of Appeals, your Honor, which held prior art patents may be offered in evidence to show no invention, without being pleaded.

The Witness: And in the Trosper patent, 1,751,773, dated March 25, 1930, discloses several figures simulating a living person or, for instance, a doll or the head of a dog, a duck, are shown in the drawings as embodying the

movable head portion, which are portions of the body and actuate it so the head moves, the mouth moves, to indicate the opening of the mouth.

Mr. Threedy: Mr. Neuman, I will call your attention and the Court's attention to the fact the Livingston
83 patent was set up in the prior art patents in connection with the petition for declaratory judgment.

By Mr. Threedy:

Q. I will hand you a copy of United States Patent No. 1,792,129, that is a photostatic copy, and which patent I will ask the reporter to mark as Defendants' Exhibit 4 for identification.

(Said document was marked Defendants' Exhibit No. 4 for identification.)

(Document shown to the witness.)

Q. Have you read and understand the disclosure of that patent, Mr. Snow?

A. I have read it and I do understand it, yes, sir.

Q. Now, does that patent which you are referring to, disclose a hinged head?

A. It does.

Q. Is there anything stated in the specification with respect to the construction of that head and if so, state what is stated.

A. Column 1 on Page 1 of the specification, Line 46, it says that the head, 12, is hinged to the body, that 13 provides a means for mounting the head in natural position on the body, and the head is provided with passage
84 15, communicating with the hollow of the body.

Mr. Threedy: If your Honor please, I would like to offer in evidence—

Mr. Neuman: Just a minute, please.

Mr. Threedy: I am sorry.

Mr. Neuman: I want to get the record straight.

This patent in question cannot be used as anticipation, it may only go in to show the state of the art, it was not pleaded in the answer, neither was it pleaded in the petition.

Mr. Threedy: That is right.

Mr. Neuman: We are seeing this one for the first time today.

Mr. Threedy: That is right.

If your Honor please, I would like to offer in evidence

the chart, Defendants' Exhibit No. 2, and also I would like to offer in evidence the cereal bowl and this hopper as Defendants' Exhibits Nos. 3 and 3-A.

I would like to offer in evidence a copy of Patent No. 1,792,129, as Defendants' Exhibit No. 4, which the witness has just referred to and we ask that the file wrapper history of the patent in suit be marked as Defendants' Exhibit No. 5, and I would like to offer it in evidence.

Mr. Neuman: With respect to that offer—

85 The Court: I don't quite get the distinction in the patent laws about that.

You say this last patent counsel produced is introduced for the purpose of showing the condition of the prior art and not showing it anticipates the invention claimed or granted. What is the difference?

Mr. Neuman: Your Honor, the difference—the defense of anticipation is a defense of a lack of novelty and when we say this patent cannot be used to anticipate, it means that this patent cannot be used to show the device was not new. They can use it for other purposes, they might want to show that Mr. Snow, as an expert, a patent expert, takes this and combines it with some others and builds up a case of lack of invention and say there is nothing inventive in what we did. They can use it for that purpose but they cannot use it to show the device is not a new device within the meaning of the patent statute and that is why the rule that requires notice at least thirty days prior to trial was a very important rule.

The Court: In the final analysis I don't see a whole lot of distinction.

Mr. Neuman: There is a big distinction, your Honor, there is a real distinction. While we can have a de-

86 vice which is new and useful, we have also to have, in addition to those two requirements of the statute, we have to have the third requirement of invention. Those are three separate elements, three separate factors, which go to make up patentable novelty.

Anticipation only relates to the novelty feature of the statute. They have to show that there was no invention in doing what we have done. As I said in my opening statement, they have used a lot of prior art and dragged a lot of things in here and say there is no invention in making anything in that shape, that this is not a new device.

Mr. Threedy: Of course I don't agree with that, Mr. Neuman.

The Court: It is not a new device, you mean it was not an invention?

Mr. Neuman: No. We have to take these things analytically, first, novelty, second, utility, and third, was it inventive?

First, as far as novelty and utility, I will argue, when we come to argue the case, that that is not really a question, novelty and utility; but I will also argue there is patentability.

The Court: Something new could be useful and not
87 an invention.

Mr. Neuman: Yes, but you and I and Mr. Threedy would be disagreeing with the Patent Office when we do that, they felt this was inventive.

The Court: I appreciate that but I say as an abstract proposition, you may have something new which is not an invention.

Mr. Neuman: Yes, that is right, you can have something which is old and it can be an invention, too.

The Court: Yes, I understand that.

Mr. Neuman: But you must have novelty, utility and inventiveness.

The Court: It must be useful and it must be novel and it must be an invention.

Mr. Neuman: That is right.

The Court: I still don't quite get through my mind the distinction between what the condition of the prior art is and what anticipates it.

Mr. Neuman: Because there are a lot of things in the prior art which throw light on the subject, on a given subject, but there can be only one patent or one description in and of itself disclosing the entire combination or the device itself.

You cannot combine references, you cannot take a
88 head of one and a body of another or a foot, all of which come from separate patents and put them together and say that is the device of the patent in suit.

The Court: I understand that.

Mr. Threedy: That is not a correct statement of the law.

Mr. Neuman: That is my understanding of the law.

The Court: Go ahead now, what is next?

Mr. Threedy: I want it understood the fact that I am not responding to Mr. Neuman is not an admission.

The Court: I understand, we just perhaps improperly injected it into the case, that is not part of the case.

Mr. Threedy: I believe I have offered in evidence a certified copy of the file wrapper of the patent in suit as Defendants' Exhibit 5; I believe I have offered it and I believe I have also offered the patent as Defendants' Exhibit 2.

(Which said documents, marked DEFENDANTS' EXHIBITS Nos. 2, 3, 3-A, 4 and 5 for identification, were thereupon received in evidence.)

Mr. Threedy: You may cross-examine.

Mr. Neuman: May we have a recess for a few minutes?

89 We would like to compare these.

The Court: We will recess for a few minutes.

(Whereupon a short recess was taken.)

90 *Cross-Examination by Mr. Neuman.*

Q. I understood you to say that you had read and you understand the Nudelman patent in suit?

A. Yes, sir.

Q. Will you take that patent and refer to it and describe the manner in which that device is operated—does your Honor have a copy of that?

The Court: Which?

Mr. Neuman: The Nudelman patent, the patent in suit.

The Court: It is attached to the Bill of Complaint, isn't it?

Mr. Neuman: I put it in as an exhibit.

The Court: Is it attached to the Bill of Complaint?

Mr. Neuman: Yes, I think so.

The Court: All right.

By the Witness:

A. The patent describes, the patent in suit describes two different heads, and describes the operation as being the—reading from the page of specifications, Column 1, Line 49:

"The head 12 is pivotally hinged to the body portion at rear thereof by any suitable hinge 14 to permit the head

91 to be tilted backward as shown in Figure 3 to expose the opening 26, and permit the contents of the spoon

to be emptied into the hollow body, 24, and from which it passes into the bowl, 22."

Then with reference to the modification it says the head is integrally formed on the body. It says the head can be made of one piece.

Reading from Column 2, Line 7, it says:

"If desired this device can be made of one piece as shown in Figure 5, where the head and body are integrally formed at 30 with the mouth portion, 32, open permanently so as to receive the contents of the spoon."

By Mr. Neuman:

Q. Now will you explain to the Court what the purpose of the device of the patent in suit is and how it functions?

A. The function of this device is merely to pass food which is taken from the bowl or the contents or whatever is in the bowl taken up on a spoon and emptied into the passageway indicated by the numeral 24 so that the contents will pass back into the bowl.

Q. The food is normally in the bowl, is it not?

92 A. That is correct.

Q. And in the process of use you finally reach the point where you have continuously taken food from the bowl and deposited it into the mouth of the figure and it is moved back to the bowl and after one continuous operation you will have emptied the contents of the bowl?

A. One continuous operation, you mean constantly until the bowl is empty. This indicates that the food taken from the bowl is returned to the bowl for gradual consumption by the person using it.

Q. For the moment let us assume, Mr. Snow, that you are not a patent expert but a mother feeding her child or a father feeding his child, will you now take this "Hungry Piggy" set and show the Court how that device is operated.

A. It is very simple. Assuming there is food in the bowl it is picked up, placed into the hopper here (indicating) so it passes from the mouth downwardly into the bowl.

Q. Now, you have also read and understand the Smith patent, No. 2,207,41[illegible]

A. That is correct.

Q. Will you refer to that patent and explain to the Court how that device is operated?

I gather from your direct testimony you were concerned

only with the structure and you did not explain the
93 operating principle or the operative purposes.

A. No.

Q. Will you do so now?

A. The patentee in this case stated the purpose of this invention—and I am reading from Column 1, Page 1, Line 3:

"It is the purpose of my invention to provide a cereal bowl that comprises a liquid receiving bowl portion and a cereal receiving hopper portion, that are so relatively arranged and located that any dry, loose cereal that may be placed in the hopper portion will be fed into the liquid retaining portion by gravity as the cereal is eaten from the liquid receiving portion of the device, or otherwise moved away from the discharge opening of the hopper. Cereals that are pre-cooked or otherwise prepared for eating in a dry state, are usually in the form of granules, flakes or other particles, that are readily fed by gravity from a hopper."

Q. I don't know whether it is clear or not, at least it
94 is not to me, I know what is in the patent, but I would like you to tell the Court how that device is used.

A. From the modification or description of the specific embodiments shown in the drawing, the patentee, in this case, discloses one method of utilizing this invention by this description here wherein the inventor states he places the dry cereal or pre-cooked cereal in the hopper, plus the fluid, something like milk, for instance, in the bowl and then as it is withdrawn when the contents are withdrawn by means of a spoon or something like that, the material will fall by gravity down into the bowl.

Q. He does not work from a storage bin or a hopper, he takes the contents from the bowl?

A. That is correct, the same as you take it from the bowl here in the patent in suit.

Q. Did you instruct a model maker as to the preparation of the hopper, which is Exhibit 3-A?

A. That is correct.

Q. Did you draw the device for him?

A. No, I gave him a copy of the Smith patent, Figure 4 thereof, which discloses the embodiments that he made this model from.

Q. Did you indicate the size that he should make, the size in which it should be made?

95 A. No, that I left to his discretion, giving him the drawing.

Q. In your opinion, is the hopper operative for the purpose intended by Mr. Smith in his patent?

A. Yes, definitely.

Q. Have you tried it to see whether it works?

A. It is obvious, it is so simple.

Mr. Neuman: There are a lot of things which may be obvious apparently, but which are shown not to be obvious.

By Mr. Neuman:

Q. I wonder if you would take this box of dry corn flakes—it is true, is it not, that Mr. Smith is interested in flakes and other dry cereals?

A. He said "dry cereal," he did not mention anything but dry cereal.

Q. He mentioned flakes.

A. I assume that would be called dry cereal, I also presume it would mean pre-cooked.

Q. I show you Line 14 of the first column, it says "cereal" and also "flakes."

A. Line 14?

Q. Yes.

A. That is correct.

96 Q. So, flakes would be among the dry cereals which he intended to be used in his device?

A. I would assume so, that is one food; he calls for others, too.

Q. Would you mind pouring some of those into that hopper?

A. No, sir.

(Witness does as requested.)

Q. Now, as I understand it, Mr. Smith pours the cream into the bowl, does he not?

A. Yes.

Q. Would you mind doing that?

A. No.

(Witness does as requested.)

Q. Now, will you show the Court how that device works, how it can be made to work according to the patent?

A. According to the patent the idea is that the material is supposed to flow down through the bottom, down here, and be picked up by the mother or whoever is feeding the child. This is, of course, a dry flake and that is apparently one form that will come through, apparently, but the patent

does not call only for dry flakes but pre-cooked cereals as well.

Q. But flakes are one of the dry cereals his device
97 is intended to be used for?

A. That is correct.

Q. Will those come out through there?

A. Yes.

Q. Have you read Smith's patent?

A. I have.

Q. Are you supposed to have much cream in there?

A. It says to put a quantity of milk or cream in the bowl.

Q. And you have covered the opening at the bottom of the hopper, haven't you?

A. I have.

Q. Will you refer to the Smith patent?

A. Yes, it says, on Page 2, Column 1, of the Smith patent:

"The preferable way of using the bowl is to fill the hopper portion with dry cereal to the extent desired, and then add milk or cream as desired, in the bowl portion, 6." Period and end of paragraph.

Q. What lines are you reading?

A. Column 1, Page 2, Line 27, the sentence beginning with Line 27.

98 Q. Will you also refer to Line 17 in that same column and read that material?

A. Well, "While ordinarily a person," is that the part?

Q. Yes.

A. (Reading):

"While ordinarily a person would not place any more liquid in the bowl than would reach to the bottom edge, 19, of the opening, 9, yet if more liquid should be added after cereal has flowed into the bowl portion, from the hopper portion, the cereal itself will prevent the liquid from entering the bottom portion of the hopper to any material extent, as dry cereal will continue to flow into the bowl portion as rapidly as it is removed with the spoon."

And then I read the next sentence, "The preferable way—" and so forth.

Q. And when you cover the opening here you have some liquid in the bottom of the hopper?

A. That is right, a small portion, because it has an inclined wall.

Q. Mr. Smith did not want that?

99 A. I just read that portion about the preferable way of putting milk or cream in it. That is one way, I agree with you that that could be used by putting a small portion of the milk or cream in that so that the material will not become soggy.

Q. And in using that device you do not take a spoon and some cereal and cream and put it back into the hopper?

A. The patentee did not say that that was the purpose.

Q. Did he suggest that?

A. No, he did not expressly say so.

Q. Do you find any suggestion of him doing that in there?

A. No, sir.

Q. You do not find any hint of such use of the device, do you?

A. No, sir, except this in Column 1, on Page 1 of the specifications, beginning of Line 39, says:

"It is also a purpose of my invention to provide a cereal dish of the above mentioned character, which, due to the movement of the cereal into the liquid receiving portion will interest the child eating cereal, in the operation of eating the same, to an extent that would not otherwise

100 exist in children who do not particularly care to eat cereals of this character, thus aiding in feeding such children cereals by arousing their interest in the process of eating the same."

Q. He is referring there to the operation which we have in the actual exhibit with the hopper filled and food being taken from the bowl and put directly into the mouth of the child?

A. That is correct.

Q. You do not suggest by that that he is suggesting the Nudelman patent?

A. No, sir.

Q. The mechanics of that operation is interesting?

A. I do not follow you.

Q. The mechanics of his operation would be of interest to the child?

A. That is correct, the same as the cereal being delivered into the hopper and then back into the bowl.

Q. Now, will you take a spoonful of cream and the flakes as they are here and put them in there, do it several times.

The Court: Put them into where?
Mr. Neuman: Into the hopper.
101 The Court: All right.
(Witness does as directed.)

By Mr. Neuman:

Q. Will those flakes now come through from the hopper into the bowl?

A. Those that I deliver from the bowl.

Q. How are you going to get those flakes down into the bowl?

A. I do not know, I imagine they will fall down here eventually, there is so much cream in there I don't know whether they will come through or not, whether those flakes are coming through there now or not. I don't know, I am trying to remove these I see here, to see.

I do not know whether they are coming through or not. I cannot answer that.

Q. Is that supposed to gravitate down into the bowl?

A. That is correct.

Q. But so far as you know, that is not occurring right now?

A. What is that?

Q. But so far as you know, that is not occurring right now?

A. So far as I can see, I cannot answer the question. It does not look like it is occurring.

102 Q. That hopper you describe is a storage bin, is that not correct?

A. A hopper is a funnel. A normal hopper is not a storage bin, an ordinary definition of a hopper is a funnel like apparatus, and as Webster puts it, "a hopper is usually of a funnel like appearance."

Q. But in this case it is used as a storage compartment?

A. More or less, yes.

Q. Is the Nudelman device used as a storage compartment?

A. No.

Q. Mr. Snow, in your opinion, if you use a cooked cereal such as Cream of Wheat or Oat Meal or the baby food called Pablum, would you feel with that hopper as your model maker made it up that that would come back into the bowl, assuming now that you were going to try to use it for the Nudelman purposes?

A. I think it would work much better than this because it is in fluid form, and it is not a heavy body such as Corn Flakes.

Q. But you do have a heavy consistency to your cooked cereals?

A. Not when you feed it to children, you would feed
103 it to them in a very thin form to eat to aid them in masticating it.

Q. In the Nudelman device you have almost a straight drop to the bowl from the mouth of the device?

A. That is right.

Q. Whereas in the Smith patent you have that long wall which he describes for a bottom wall?

A. That is correct.

Q. Will you refer to the Smith patent and read his description as to that wall, referring particularly to Line 49, Column 2, Page 1, where he speaks of the wall?

A. (Reading.)

"The inclined wall portion, 12, has an inner inclined face, 14, having a portion that approaches straightness, between the top and bottom ends thereof, and is concavely curved at 15 near the top end thereof."

Q. And don't you think that your cooked cereals would deposit on that wall which he speaks of as having long straightness or having straightness rather than getting back into the bowl, if you are going to try to use it for the Nudelman function?

A. No, sir, I do not agree with you, Mr. Neuman.

Q. Will you refer to your chart, Defendants' Ex-
104 hibit No. 2?

A. Yes, sir.

Q. I call your attention to the fact that Column 2 speaks of "Said figure comprising a body portion".

A. Yes.

Q. What is your understanding in the light of the Nudelman specification, what he means by a body portion?

A. The body portion is the entire matter colored in red.

Q. You mean this entire figure (indicating)?

A. I am sorry, I was thinking of the figure.

Q. That is—all right.

A. The body portion is indicated by the numeral 15. It is that portion which is adapted to be placed adjacent to the exterior of a feeding bowl.

Q. And isn't the Nudelman body portion the figure which is indicated by the reference numeral, 10?

A. The specification refers to the body as the body being indicated by the numeral 10, that is the general numeral applied to the overall figure.

Q. No. He refers to that as the body portion, No. 10 as the body portion. You say he refers to the body as No. 10, but the reference to the body portion is No. 10, and if you will look at Line 24 he has defined what the body portion is, and that is the same language you will
105 find in the claim, isn't it?

A. Yes, that is correct.

Q. Then that reference to character 16 on your chart is not accurate, is it?

A. Yes, I think it is still accurate because you have to have a numeral for the figure and if you do not have a numeral for the figure, it is one of the elements of the column you are not going to be able to read, that is, the column on the drawing.

Q. The figure is the entire figure which would be the body portion, 10, and the head. You could have used that for the first element?

A. No, because it says: "Said figure comprising the body portion", so the figure has got to be something and the body portion something else.

Q. You are just taking the reference he used to describe the concave surfaces or the belly portion of the body?

A. Yes, otherwise I would have to apply a whole new numeral. I am using your numeral.

Q. You should have used 10 for the body portion?

A. If I did I would have to use another numeral for the figure which I would have to supply.

Q. What is your understanding, apart from the
106 Nudelman specification, of the meaning of the term "body" as applied to a structure?

A. A body is the main portion of something like, for instance—well, using your figure 5, I would say the body is the portion extending between the neck which has the numeral 30, and the bottom of the figure, that would be the body.

107 Q. Now, when you use the word "body" with reference to the structure, it is the main or central portion of the structure, is it not?

A. That is right.

Q. Now, —

A. Depending of course on the figure, to be quite clear here.

Q. Look at Figure 4 of the Smith patent which you have on that chart.

A. That is right.

Q. What would you say was the main or central portion of Smith's structure? This color in red is the whole device?

A. This color in red is the whole device, that is right.

Q. Now, will you break that down to give me the central body portion of that device?

A. The main or central body portion of that device?

Q. With the same hopper?

A. Well, I would say that is generally indicated by the numerals 12′ and 23.

Q. Well now, 12′ is the wall, isn't it?

A. 12′ is the inclined wall, correct.

Q. And 23 is that parallel projection?

A. 23 is the parallel projection, correct.

Q. Is it your position to this Court that the pro-
108 jection constitutes the main or central portion of that hopper?

A. Yes, that extends exteriorally of the bowl as defined by the claim.

Q. You are being slightly technical here. That is the portion of the elbow which extends beyond the feeding bowl, is that what I understand you to say?

A. That is correct.

Q. But the main portion of the hopper does not extend beyond the main feeding bowl, does it?

A. The main portion of the hopper?

Q. The main portion of the hopper?

A. Well now, you have got to define what you mean by main portion.

Q. I asked you to define that, before. I asked you what the body portion of the structure is.

A. Well, you have got to be more specific, you can't talk nebulously, that figure—

Q. What is the body portion of a structure, any structure?

A. Well, again, that is too nebulous, you have got to refer to some particular structure.

The Court: What is the body portion of that structure, let us get to this.

The Witness: Of this structure here?

109 The Court: Yes, that is what we are talking about.

The Witness: It is this inclined wall, your Honor, and this projection here that extends exteriorally of the feeding bowl.

By Mr. Neuman:

Q. You are then referring to one of the walls of that hopper?

A. That is right.

Q. This wall and that little projection?

A. It has this whole wall in it.

Q. About that much—I am indicating now the part which you say is the body portion of that hopper.

A. The specification calls this the whole wall here, right around practically to this.

Q. What specifications are you talking about now?

A. These drawings of the Smith patent in suit, pardon me, the Smith patent 2,207,417.

Q. And Smith calls that his body portion of his hopper?

A. Smith calls that section, the concave side walls that you are talking about now, that I am talking about, as 12′, an inclined wall, the 23 is the projection, this projection down here.

Q. And you say that that part of the wall and that little projection constitutes the body portion of the

110 hopper, that is your position?

A. Yes, that is my position.

Q. And what would you call the balance of the Smith hopper?

A. The chute and the discharge.

Q. What is your understanding of the term "projection"?

A. Projection, a projection is something that extends from a surface.

Q. And from something else, doesn't it, a projection?

A. Anything that extends from one surface, this is a projection, this little bead on the desk here is a projection.

Q. It is a projection though from a bench, isn't it?

A. A projection from this surface, if that is what you are driving at, Mr. Neuman.

Q. Now, you have used the reference, Number 16, under the Smith patent, to describe or indicate the words "a forwardly extending portion," where in the Smith patent do you find any description of that element?

A. The specification of the Smith patent does not allude or I should say does not describe the numeral 16 appearing in Figure 4 of the Smith drawing of that patent.

Q. We don't know that Smith would have said that about No. 16, do you?

111 A. No, it is obvious the forwardly projecting portion.

Q. Isn't that a downwardly projecting portion?

A. It is downwardly and forwardly from the edge of the bowl.

Q. Now, Mr. Snow, I understood you to say that you, in the course of your patent practice, you have written reports for clients on validity and infringement questions.

A. That is correct.

Q. You do a lot of that work, don't you?

A. I do.

Q. We will assume a hypothetical case where one of your clients, a client of Rummler, Rummler & Snow, came to you and said he had a device which you classified as being Smith's, had a hopper and no bowl, and let us assume also that the Nudelman patent is called to your attention, and that there aren't any questions as to the validity of this claim 2 and your client asked you whether he was free to make this hopper and this bowl, in view of Claim 2 of Nudelman's patent, would you tell him that that hopper and bowl constituted an infringement of Claim 2 and that he could not make the hopper and bowl construction?

A. You have to allow me to read this from that interpretation, I did not break this thing down from that

112 point of view, we broke it down from the other point of view.

Now, you are asking me to assume that the Smith claim, if I understand you correctly, that the Smith construction is something that is brought in, to find out whether or not it is an infringement if it was manufactured, with Claim 2

Q. Claim 2, or is an infringement of Claim 2.

A. That is correct.

Mr. Threedy: Your Honor, I cannot see the materiality of that question, whether it is an infringement of Claim 2, we are concerned here with the question of anticipation of the invention.

The Court: Let him answer the question.

The Witness: My opinion would be again, that to

manufacture this, this device, in view of the Smith patent, the client would be liable to be charged with infringement of the claims of the Nudelman patent, by the owners of the Nudelman patent.

By Mr. Neuman:

Q. The owners of the Nudelman patent could stop his making this device?

A. I think so.

The Court: "This device" does not mean anything.

The Witness: Exhibit No. 3.

113 Mr. Neuman: Exhibit 3 and 3-A.

The Witness: We are simply talking of Claim 2.

By Mr. Neuman:

Q. I am talking about Claim 2.

A. That is correct.

Q. Now, looking at that hopper, will you tell that client that that hopper was, using this language and figure, "formed to simulate a living creature"?

A. I would have to tell my client that the hopper as presented to me, although it is not formed to simulate a living creature, it is immaterial from the infringement standpoint because that is merely a functional statement in the claim and does not lend patentability thereto.

Q. Would you tell your client that that hopper device has a simulated mouth in the sense in which Nudelman has described his device in his patent?

A. My answer would be the same as the answer to the previous question.

Q. So you would tell your client that he couldn't make the hopper device of Figure 3—I mean, of Defendant's Exhibits 3 and 3-A?

A. That is correct.

Q. Well, you as a patent attorney, do you agree that it may be contended that the Smith device was not

114 designed to perform Nudelman's function, not whether it is a valid contention or not, but do you agree that such a contention may be made with respect to the Smith device?

A. I am sorry, I lost that. Will you please read the whole question?

(Question read.)

A. I don't understand what you are trying to get at, Mr. Neuman, except maybe I can answer it in this way:

It is my opinion, and I believe it is the opinion of all patent lawyers, that the inventor is never charged with the knowledge of all the uses to which his invention may be put and, consequently, the fact the Nudelman patent discloses one specific form of use of a passageway to return goods from the bowl to a channel or passageway back into the bowl, and he shows it in the shape of a pig and in the Smith patent this is nearly round, they are both still merely figures, in the broad sense of the term, and I don't think it makes a bit of difference whether or not the Smith hopper is formed in the shape of a watermelon, pig, dog or what-not, as long as the functional purpose of the Smith hopper is the same as the claim that you are reading it on, if I am following the thought that you are trying to get across.

Q. I understand your position, that is Mr. Tree-
115 dy's position.

I want to know whether or not a patent attorney and let us take a reasonably prudent patent attorney trying to get Claim 2 allowed over the Smith structure in the Patent Office, do you say that—I am not asking you to agree with me on this, this is your viewpoint, I want to know whether the point can be made and would be made by a reasonably prudent patent attorney, that the Smith device was not designed by Smith for the Nudelman purpose and operation?

A. Well, that argument is made all the time, that one device is built not to be used for the same function, but you don't get anywhere with the Patent Office, they are constantly rejecting claims in the patent application if the structure is what they say, they read the claims exactly as they are presented to them on a particular structure.

Q. I am going to let you talk all you want to talk, I am not too concerned about that, but I want you to answer my question.

A. I am answering your question, Mr. Neuman, but I am sorry I am not following you very well here with your broad questions.

Q. Would such an attorney argue to the Patent
116 Office that it is termed that Smith's avowed object was to put the cream and the cereal from the bowl back into that hopper?

A. Well, you could argue that way, yes.

The Court: We are not getting anywhere, let us get

some questions here that have to do with this law suit, not what some lawyer might argue to the Patent Office.

Mr. Neuman: Your Honor, in my opinion these are all valid objections, against this device.

The Court: You are asking this man what some reasonably prudent lawyer might do in the Patent Office. I don't know how he can figure out what a reasonably prudent lawyer would do down there, how can he know?

Mr. Neuman: He has had to do with the Patent Office.

The Court: Let us get down to some questions that have to do with the law suit. We have spent a couple of hours here without getting anywhere.

By Mr. Neuman:

Q. Is it not contrary to Smith's stated directions to take the cereal from the bottom of the bowl and put it back into the hopper?

A. I wouldn't say it is contrary, I would say that Smith's specification states that the material can flow from the hopper into the bowl and that he doesn't say you 117 are not to take the material from the bowl back into the hopper, there is nothing there that says you can't do it.

Q. I am asking you if it is not contrary to his avowed purpose to use that device that way?

A. I can only tell you what the specification shows and I think I have answered your question, Mr. Neuman.

The Court: Let us take a recess until 2:00 o'clock.

(Thereupon a recess was taken in the above-entitled cause until 2:00 o'clock p. m. of the same day.)

118 Monday, October 24, 1949,
2:00 o'clock p. m.

Court met pursuant to recess.

Parties present: same as before.

WILLIAM A. SNOW, called as a witness in behalf of the Defendants herein, having been previously duly sworn, resumed the stand and was examined and testified further as follows:

*Cross-Examination (Continued) by Mr. Neuman.*

Q. I want to ask you this, is it not contrary to Smith's express teaching to return the mixed cream or milk and cereal to the hopper portion?

119 A. Yes.

Q. Do you find in the Smith patent any teaching to stimulate and encourage infants to eat by reason of psychology and mimicry?

A. The only answer to that question I read to you before, it is in Column 1, Page 1, of the specification, to arouse the child's interest, and I am referring to Smith's patent 2,207,417, the third paragraph in Column 1, which refers to the use of this device, the Smith device, that it will furnish an interest to the child and cause him to eat.

Q. But that is an interest by the child and not Smith's operation. That is not the idea of mimicry, is it?

A. No, sir, not mimicry.

Mr. Neuman: That is all.

*Redirect Examination by Mr. Threedy.*

Q. Mr. Snow, in the light of your understanding of the Smith patent No. 2,207,417, is the Smith disclosure limited to the use of a particular food?

A. No, sir, it says, "dry cereal" and "pre-cooked cereals" in the specification.

Q. In your opinion, based on your understanding of the two patents in suit, are either of those claims in

120 suit limited to a particular food?

A. No, sir.

Q. Does the specification of the patent in suit describe a particular type of food to be used with the device?

A. It does not mention any food of any kind or character.

Q. During your examination this morning with respect to the Smith device you pointed out some of the corn flakes would not pass through the passage of the Smith device?

A. Yes.

Q. In your opinion, will the corn flakes pass through the funnel-shaped device of the defendants' device charged here to infringe the patent in suit?

A. It will not.

Q. Is this the one in suit, Mr. Neuman?

Mr. Neuman: Yes, Plaintiff's Exhibit No. 2.

By Mr. Threedy:

Q. I am handing you the defendants' device marked for identification as Plaintiffs' Exhibit No. 2, and also corn flakes and some milk—and I have a blotter here which you might use, and do it very quickly and rapidly so as not to take up any unnecessary time.

A. For the purpose of the record I have placed 121 some corn flakes, the same corn flakes that were used in connection with the demonstration this morning into the bowl of defendants' construction.

I have taken some corn flakes in a spoon with milk and placed it into the mouth of the defendants' pup-like structure and I want to call the Court's attention to the fact that no corn flakes will pass through this passageway (indicating).

The fluid will, the fluid will fall right through but the corn flakes will not.

It is almost impossible, your Honor, to get the corn flakes on the line that passes through that passageway. They all jam right into the passageway and none pass through.

If you will close the head a minute and turn it over, your Honor, you can look into the interior of that passageway and see they will not pass through.

Mr. Threedy: No further redirect examination, if the Court please.

*Recross Examination by Mr. Neuman.*

Q. Are you distinguishing between pre-cooked foods and dry cereal?

122 A. I am.

Q. Does Smith make that distinction?

A. I believe he does.

Q. Will you read, beginning with Line 12, in Column 1?

A. In Column 1, Line 12, Smith says:

"Cereals that are pre-cooked, or otherwise prepared for eating in a dry state, are usually in the form of granules, flakes or other particles that are readily fed by gravity from a hopper. Such cereals are more palatable and are also more readily digested, if the same are not soaked in the liquid before being eaten."

I see your point, just a minute.

You are right, counsel. I am wrong in making the statement that Smith refers to a pre-cooked cereal as one being listed and not in a dry state.

The Smith patent specification does not particularly call for it, it says a pre-cooked is a dry cereal.

Q. Just one more question, Mr. Snow, it is the purpose of Smith to maintain these dry cereals in a crisp form instead of having them soggy, so, as he said, it will

123 be chewed more thoroughly by the eater?

A. That is as I read in the previous answer.

Q. And for that purpose he has divided his bowl into two compartments, one to maintain the cereal in a dry state and the other in which to place the cream or milk?

A. The answer to your question is yes, as we demonstrated here. Dry cereals will not flow downward into the bowl but have to be forced down.

Mr. Neuman: That is all.

Mr. Threedy: Just one question, it is not properly redirect, Your Honor, but I would like to ask the Court's permission to ask it.

The Court: All right.

By Mr. Threedy:

Q. Do either of the two claims of the patent in suit limit the size of the passage of the funnel-shape either in length or diameter?

A. No, they do not.

Mr. Threedy: That is all.

Mr. Neuman: That is all.

(Witness excused.)

Mr. Threedy: I would like to ask the reporter to mark Patent No. 2,206,960, and Patent No. 2,224,683 as Defendants' Exhibit 6 and 7, respectively.

124 The Court: All right.

Mr. Threedy: If the Court please, these patents were not set up in the defendants' answer or in the petition for declaratory judgment or in the answer to plaintiffs' complaint, but I offer these two patents in evidence as Defendants' Exhibits 6 and 7 for the purpose of showing that other devices have been accomplished which are used for the purpose of interesting a child in eating cereals and like foods.

Unfortunately I do not have copies of the patents for counsel but if he desires I will get him photostats.

Mr. Neuman: May we look at them for a moment, your Honor?

The Court: Yes.

Mr. Neuman: We have no objection to the patents.

The Court: They may be admitted.

(Which said documents were marked DEFENDANTS' EXHIBITS 6 and 7, respectively, for identification and were thereupon received in evidence.)

125 Mr. Threedy: The defendant rests.

Mr. Neuman: I have no rebuttal, your Honor.

The Court: Very well.

(Which was all of the evidence offered or received on behalf of either of the parties in the above-entitled matter.)

126 The Court: There is not much difference between this chart that you are using and his chart, No. 2, that they produced or their Exhibit No. 2.

Mr. Neuman: Their Chart No. 2 shows that one of 127 the figures from our patent—

The Court: You have followed the same procedure and have taken their patent and have taken it apart.

Mr. Neuman: No, I am taking our claim and showing how our claims lays itself on their device, which is the accused device.

The Court: It is a comparison.

Mr. Neuman: Yes.

The Court: That is pretty much like their Exhibit No. 2.

Mr. Neuman: Except they are not showing what we are trying to show.

The Court: I understand, they are making a comparison, so, having let their Exhibit No. 2 go in, I see no reason why this should not go in.

Have it marked as an exhibit and let it go in.

Mr. Neuman: What is our next exhibit number?

Mr. Kraus: I think fifteen.

Mr. Neuman: We can do that later, I think it will be our Plaintiffs' Exhibit No. 15.

The Court: All right. Go ahead.

128 (Which said chart, was marked PLAINTIFFS' EXHIBIT NO. 15 for identification and was thereupon received in evidence.)

129 Now I have tried to cover the high spots in my argument and just as a matter of a light review of what my worthy opponent has pointed out as their claim of invention, I would like to review some of those statements. For example he says that invention involves novelty and utility. I take no issue with that, but we should add to that that it must also amount to invention.

The fact that the invention is new and the fact that it is useful does not in itself make it patentable; we don't patent ideas; we patent the mechanism or the means by which we carry out the thing we seek to accomplish; it is the structure that we patent. If that structure is shown in the prior art then that structure is not a patentable feature and whether it has novelty or utility is of no point.

130 Now, Mr. Threedy talked about his design patent decision and your Honor, I don't think such decisions have anything to do with design patents or are relevant in this case.

Of course, if we had taken out a design patent on the shape of the pig, such a patent would be invalid, but where we have the shape of a pig or the shape of an animal as being of the essence of this invention, it is very essential, in order to carry out Nudelman's concept, that you have a figure simulating a living creature, a living animal, so that you may put food into its jaws, which has the psychology of mimicry, which this device has and which makes this device a very useful device, and that is why I objected to Mr. Snow striking from Claim 2 the simulation of an animal, simulating the figure of an animal because that is very essential to this invention and that is something which you find in the puppy device.

## HUNGRY PIGGY A UTILITY-TOY WHICH SOLVES THE FEEDING PROBLEM



HUNGRY PIGGY is a radically new conception in the baby field which provides a definite solution to the ever present feeding problem. Combining the practicality of a utility and the appeal of a toy, Piggy encourages baby to imitate Piggy's happy, healthy appetite. HUNGRY PIGGY clamps over the edge of the bowl, opening his mouth wide when a spoonful of food is inserted. He gives the appearance of actually swallowing with unflagging enthusiasm. However, he is so constructed that the food returns right back into the bowl and baby isn't denied a single morsel. Piggy comes in a pleasant tone of pink Lustrex—a plastic that withstands hot water without distortion or change in color. He is accompanied by a companion 'Piggy Bowl' comprising a two piece set with the further addition of a novel spoon, fork and stand in a five piece ensemble. Accessories are in complementary colors of heat-resisting Lustrex. Based on the psychological mechanism of mimicry ("One for the baby and one for piggy") HUNGRY PIGGY easily persuades baby to eat where all of mother's commands and wiles may fail.

132 PLAINTIFFS' EXHIBIT NO. 6.

(Filed Jan. 30, 1950. Roy H. Johnson, Clerk.)

(Letterhead of Topic Toys—Chicago, Illinois.)

Hungry Piggy Sales.

| Date | Amount |
|---|---|
| September 1948 | 742 |
| October | 14,458 |
| November | 28,586 |
| December | 20,256 |
| January 1949 | 8,862 |
| February | 16,686 |
| March | 21,360 |
| April | 17,488 |
| May | 15,092 |
| June | 13,776 |
| July | 11,916 |
| August | 10,954 |
| September | 11,210 |
| Total | 191,386 |



NEVER HAS A UTILITY-TOY BEEN MADE TO ANSWER SUCH A DEFINITELY IMPORTANT NEED.

Hungry Piggy solves a Mother's feeding problems. The clever little plastic piggy clamps right over the bowl. His mouth opens wide when a spoonful of food is inserted. Hungry Piggy gives the appearance of *actually swallowing*. However his body is so constructed that the food *returns right back into the bowl* and baby gets his full portion. With his healthy, happy appetite Hungry Piggy encourages the child to follow by example, right down to the last mouthful.

The bottom of the accompanying bowl contains an engraving of a well fed little piggy and the words "All Gone."

Hungry Piggy is in pastel pink, bowl in harmonizing blue. Both made of Lumex—withstands hot water without distortion in form or change in color.

RETAIL PRICE

$1.00

Two piece set packed in display box as illustrated. Three dozen to shipping container. Immediate delivery. Shipping weight, 60 lbs.

F. O. B. CHICAGO, ILLINOIS

STANDARD TRADE DISCOUNTS

RETAIL PRICE $1.39

STANDARD TRADE DISCOUNTS

F. O. B. CHICAGO, ILL.






The addition of an original, plastic spoon and fork set with Hungry Piggy and Bowl makes an appealing gift value in the baby field.

Heads of spoon and fork are laughing bunnies. Bodies are part of stand.

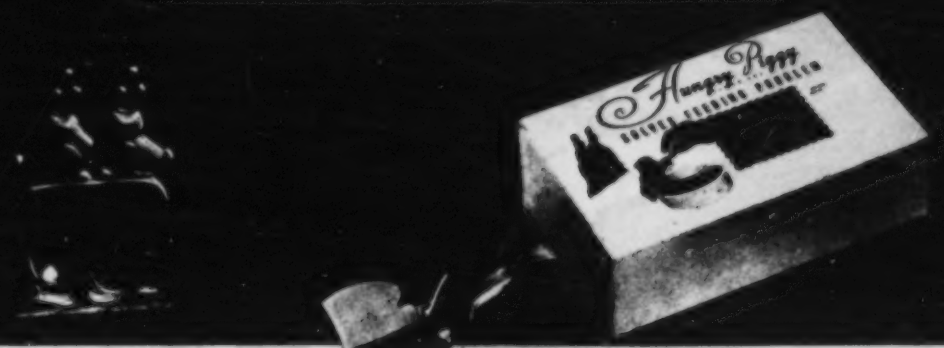
When spoon and fork are not in use, they are snapped into stands which form body of bunnies. Spoon and fork and stand in contrasting colors of pink and blue. Made of Lumex—withstands hot water.

## "HUNGRY PIGGY" AVAILABLE AS A 5-PIECE SET IN A BEAUTIFUL DISPLAY BOX

The addition of an original, plastic spoon and fork set with Hungry Piggy and Bowl makes an outstanding gift value in the baby field.

Heads of spoon and fork are laughing bunnies. Bodies are part of stand.

When spoon and fork are not in use, they are snapped into stands which form body of bunnies. Spoon and fork and stand in contrasting colors of pink and blue. Made of Lustrex —withstands hot water.




**NEVER HAS A UTILITY-TOY BEEN MADE TO ANSWER SUCH A DEFINITELY IMPORTANT NEED.**

Hungry Piggy solves a Mother's feeding problems. The clever little plastic piggy clamps right over the bowl. His mouth opens wide when a spoonful of food is inserted. Hungry Piggy gives the appearance of *actually swallowing*. However his body is so constructed that the food *returns right back into the bowl* and baby gets his full portion. With his healthy, happy appetite Hungry Piggy encourages the child to follow by example, right down to the last mouthful.

The bottom of the accompanying bowl contains an engraving of a well fed little piggy and the words "All Gone."

Hungry Piggy is in pastel pink, bowl in harmonizing blue. Both made of Lustrex—withstands hot water without distortion in form or change in color.

Beautiful gift box in pastel pink and blue has a truly quality appearance. A perfect gift. Five pieces set as illustrated in gift box packed 2 dozen to shipping container. Weight, 22 lbs.

RETAIL PRICE $1.00

STANDARD TRADE DISCOUNTS

F. O. B. CHICAGO, ILL.

FILED

JAN 30 1950

AT ..... O'CLOCK .....

ROY B. JOHNSON

CLERK

12-4

# Sensational!

*The Answer to Mothers' Feeding Problems*

- ★ The Perfect Utility
- ★ A Fascinating Toy
- ★ A Splendid Gift
- ★ A Sales Natural!




PIGGY: 3½" HIGH
2½" WIDE

BOWL: 1¾" HIGH
5" IN DIAMETER

RETAIL PRICE

Two piece set packed in display box as illustrated. Two dozen to shipping container. Immediate delivery. Shipping weight, 15 lbs.

**79c**

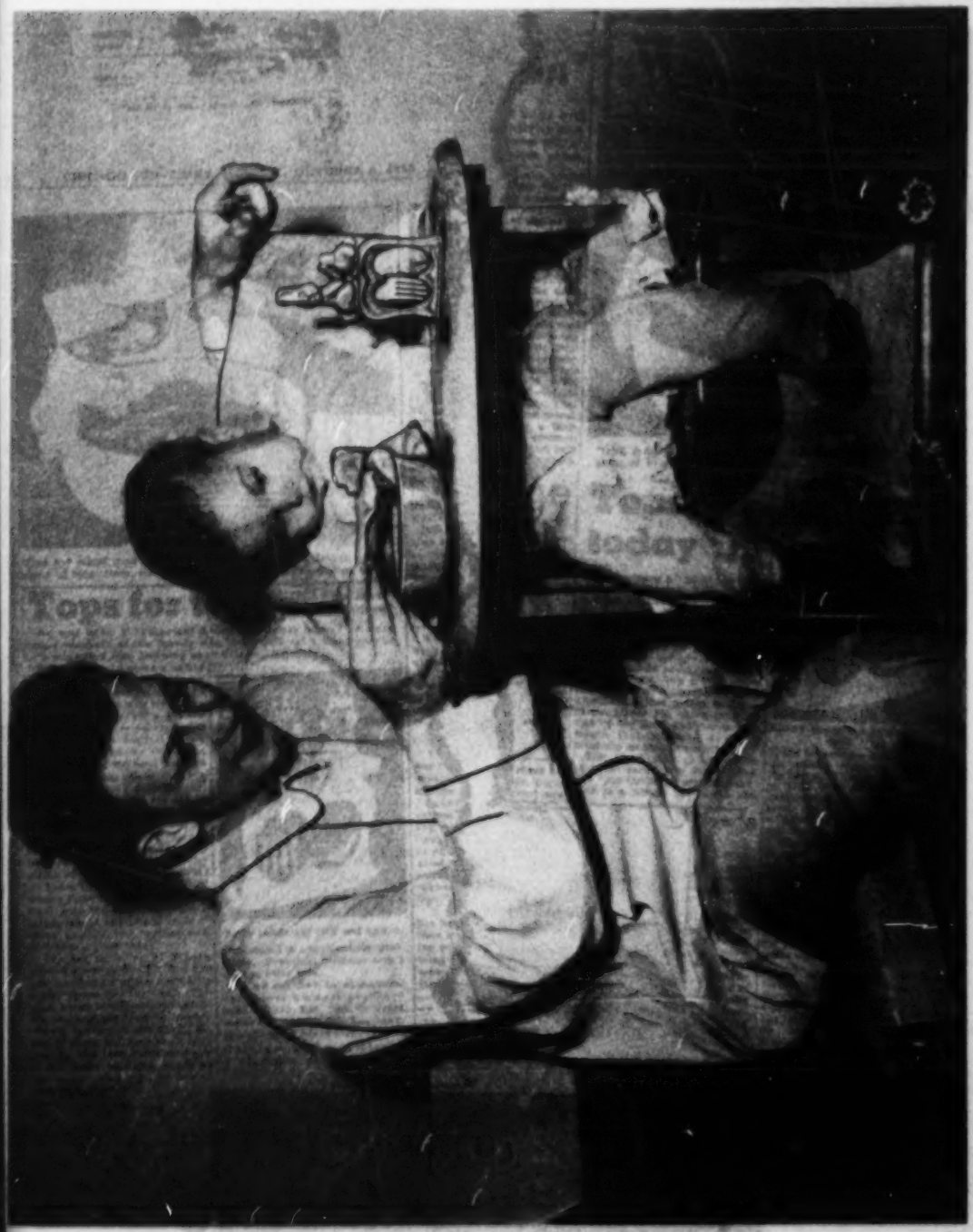
F.O.B. CHICAGO, ILLINOIS

STANDARD TRADE DISCOUNTS

YORK TOYS


NEW! CLEVER!
HUNGRY PIGGY
BABY DISH
and
A tricky little feeding dish that makes a game of baby's meal time
6 CANS OF YOUR FAVORITE BRAND OF BABY FOOD
PIGGY REALLY EATS!
ALL FOR ONLY
$1.19

PLAINTIFFS' EXHIBIT NO. 10.



PLAINTIFFS' EXHIBIT NO. 11.

74

4928





"One for piggy, and one for baby." Tricky little device makes some of meal time, overcomes problem tot's reluctance to eat.

# Tops for today

By Janet Windsor

Do you have a "reluctant Robert" in your home? A very junior member of the family who just won't eat a thing unless he's wheedled into downing each bite?

If every meal involves a battle with baby, you'll be glad to hear there's a new device on the market that should actually end these tiring sessions. It's a very clever plastic bowl with small pink piggy attachment that makes eating a game. Mister Pig hooks onto the side of the bowl and has a wide mouth that can take as big a mouthful as your little rascal.

The whole idea of the set is based on baby's love for mimicry. The "one for piggy, one for baby" trick is a simple but sound one. If the tot sees the little porky eating without complaint, he will do the same. What he doesn't know is that the food slides right through the pig and back into the bowl. Psychiatrists might say it's a "mean" trick to play, but mother will feel it's a good idea.



Bunny heads top fork and spoon, are colored in a harmonizing pink shade. Practical mothers won't want to miss this.

The set sells for $1 if purchased alone or for $1.39 if you are interested in the matching bunny spoon and fork set. The pink stand has bunny bodies at the top and the feeding implements fasten on the back, the top of them forming the bunny heads. The fork and spoon are in the same soft blue shade as the bowl. The pig and holder are colored in a harmonizing pink shade. Practical mothers won't want to miss this.

(For further information, call Janet Windsor at DEarborn 2-2330, Ext. 782, or write her at the SUN-TIMES, Box 1180, Merchandise Mart Post Office, Chicago, 54, Ill., inclosing a stamped, self-addressed envelope.)



# Women's sphere



"ONE for piggy, and one for baby." Tricky little device makes some of meal time, overcomes problem tot's reluctance to eat.

# Tops for today

By Janet Windsor

Do you have a "reluctant Robert" in your home? A very junior member of the family who just won't eat a thing unless he's wheedled into downing each bite?

If every meal involves a battle with baby, you'll be glad to hear there's a new device on the market that should actually end these tiring sessions. It's a very clever plastic bowl with small pink piggy attachment that makes eating a game. Mister Pig hooks onto the side of the bowl and has a wide mouth that can take as big a mouthful as your little rascal.

The whole idea of the set is based on baby's love for mimicry. The "one for piggy, one for baby" trick is a simple but sound one. If the tot sees the little porky eating without complaint, he will do the same. What he doesn't know is that the food slides right through the pig and back into the bowl. Psychiatrists might say it's a "mean" trick to play, but mother will feel it's a good idea.

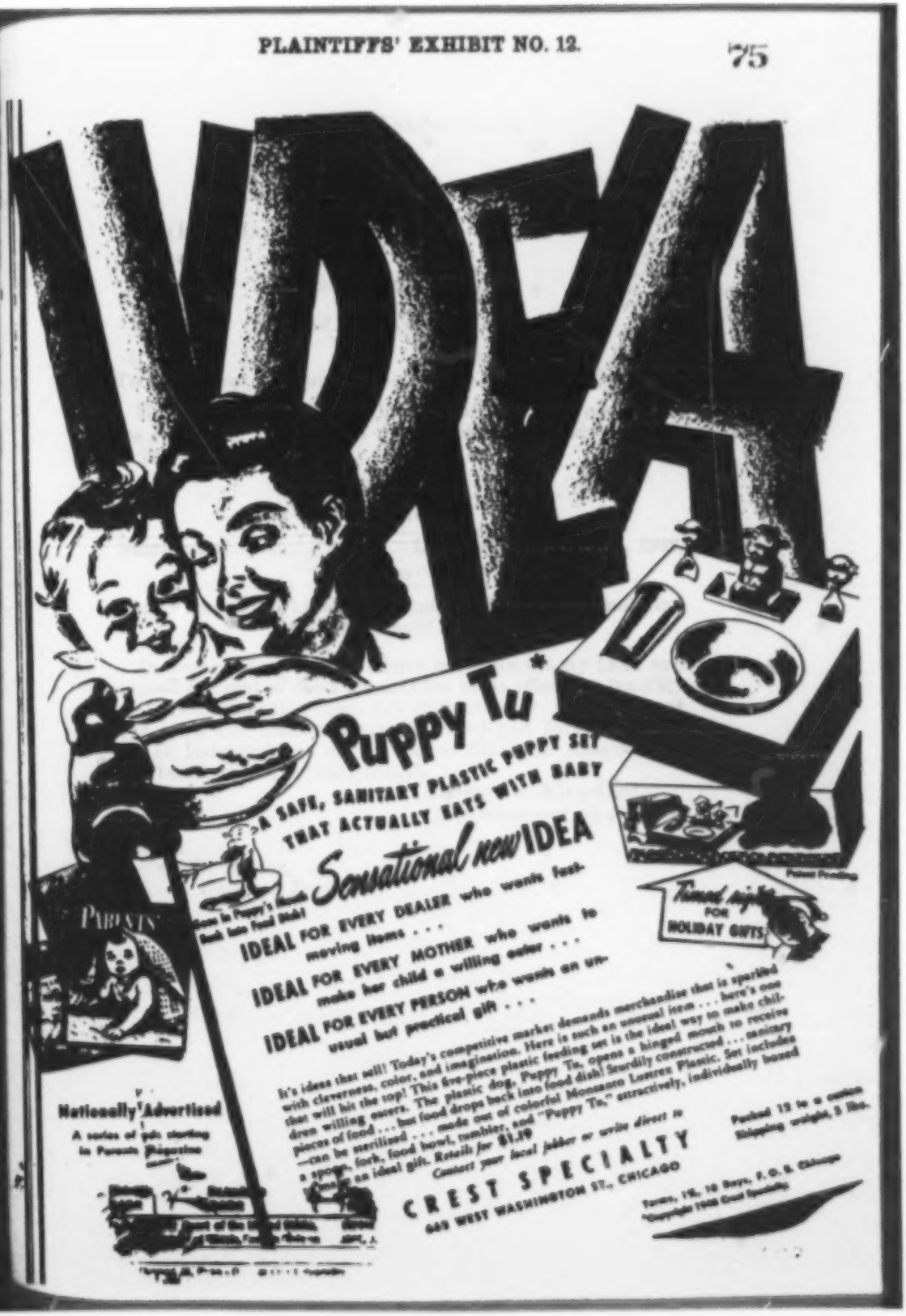


Bunny heads top fork and spoon

The set sells for $1 if purchased alone or for $1.39 if you are interested in the matching bunny spoon and fork set. The pink stand has bunny bodies at the top and the feeding implements fasten on the back, the top of them forming the bunny heads. The fork and spoon are in the same soft blue shade as the bowl. The pig and holder are colored in a harmonizing pink shade. Practical mothers won't want to miss this.

(For further information, call Janet Windsor at DEarborn 2-2330, Ext. 782, or write her at the SUN-TIMES, Box 1180, Merchandise Mart Post Office, Chicago, 54, Ill., inclosing a stamped, self-addressed envelope.)




IDEA
Puppy Tu*
A SAFE, SANITARY PLASTIC PUPPY SET
THAT ACTUALLY EATS WITH BABY
Sensational new IDEA
IDEAL FOR EVERY DEALER who wants fast-moving items . . .
IDEAL FOR EVERY MOTHER who wants to make her child a willing eater . . .
IDEAL FOR EVERY PERSON who wants an unusual but practical gift . . .
It's ideas that sell! Today's competitive market demands merchandise that is sparkled with cleverness, color, and imagination. Here is such an unusual item . . . here's one that will hit the top! This five-piece plastic feeding set is the ideal way to make children willing eaters. The plastic dog, Puppy Tu, opens a hinged mouth to receive pieces of food . . . but food drops back into food dish! Sturdily constructed . . . sanitary —can be sterilized . . . made out of colorful Monsanto Lustrex Plastic. Set includes a spoon, fork, food bowl, tumbler, and "Puppy Tu," attractively, individually boxed as an ideal gift. Retails for $1.19
Contact your local jobber or write direct to
CREST SPECIALTY
643 WEST WASHINGTON ST., CHICAGO
Packed 12 to a carton
Shipping weight, 5 lbs.
Terms, 1%, 10 Days, F. O. B. Chicago
*Copyright 1948 Crest Specialty
Nationally Advertised
A series of ads starting in Parents Magazine
PARENTS
Flower Printing
Timed right FOR HOLIDAY GIFTS

139 PLAINTIFFS' EXHIBIT NO. 14.

(Filed Jan. 30, 1950 Roy H. Johnson, Clerk.)

DEPARTMENT OF COMMERCE

United States Patent Office

To all persons to whom these presents shall come, Greeting:

This Is To Certify that the annexed is a true copy from the records of this office of the File Wrapper and Contents, in the matter of the

Letters Patent of
Ben B. Manaster,

Number 2,453,922, Granted November 16, 1948,

for

Improvement in Child's Combination Appetite-Stimulating and Amusement Devices.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this ninth day of September, in the year of our Lord one thousand nine hundred and forty-nine and of the Independence of the United States of America the one hundred and seventy-fourth.

Lawrence C. Kingsland,
*Commissioner of Patents.*

(Seal)

Attest:
C. W. Sutton,
*Chief of Division.*

140 3939

Number (Series of 1948)

36773

Patent No. 2453922
Dated Nov. 16, 1948
(Ex'r's Book) 69-37

Div. 57

Name Ben B. Manaster,
of Chicago,
State of Illinois.

Invention Child's Combination Appetite-Stimulating and Amusement Devices.

Original

Application Filed Complete July 2, 1948

Parts of Application Filed

Petition, Specification, Oath, First Fee $30 1 sheet Drawings, } July 2, 1948

.....

.....

.....

Examined and passed for Issue Sept. 15, 1948 Arthur B. Miller, Exr. Div. 57
Notice of Allowance Oct. 15, 1948

*By Commissioner.*

Final Fee $30 Oct. 18/48
Attorney Clarence E. Threedy, 111 West Washington St., Chicago 2, Ill.
Associate Attorney .....
No. of Claim Allowed (per K. R.) 4 Print Claims 1 in O. G. Class 46-141
Title as allowed Child's Combination Appetite-Stimulating and Amusement Devices

(In left-hand margin) Division of App., No. ....., filed ....., 19.....

141 (Letterhead of Clarence E. Threedy, Chicago.)

(Stamp) Mail Division Jul-2 1948 U. S. Patent Office.

30.00
July 1, 1948

Commissioner of Patents
Washington 25, D. C.

Sir:

Re: Patent Application of
Ben B. Manaster
On Child's Combination
Appetite-Stimulating and
Amusement Device.
(Case No. 3939)

In am enclosing herewith for filing the above application, including one sheet of drawing.

The filing fee of $30.00 is covered by the accompanying certified check.

Respectfully submitted,
Clarence E. Threedy.

CET:BS
Enc.

1 36773

142 2799
1/51 36773

(Stamps) Mail Division Jul 2 1948 U. S. Patent Office.
U. S. Patent Office Received Jul 14 1948 Div. 57

922

This invention relates to Child's Combination Appetite-Stimulating and Amusement Devices.

An object of the invention is to provide a character simulating an animal such, for example, *(AS) a dog in a sitting position, adjacent a dish or bowl to stimulate a child's interest in eating by arranging the head of the character in a posture which presents an appeal for something to eat, and which head is capable

* Matter in parentheses inserted.

of vibratory or oscillating action by virtue of contact
with a feeding spoon, whereby to simulate feeding action.

—1— 36773

143 2800

It is the intent that this character thus arranged adjacent
the dish or bowl will have the effect of inducing the child
to alternately feed itself and the character, thus stimulating
the child to consume its food.

Other objects will appear hereinafter

The invention consists in the novel combination and
arrangement of parts to be hereinafter described and claimed.

The invention will be best understood by reference
to the accompanying drawings showing the preferred form of
construction, and in which:

Fig. 1 is a perspective view of the invention showing the same in sitting position with respect to a
bowl or dish;

Fig. 2 is a side elevational view of the same;

Fig. 3 is a vertical sectional detail view of the same.

—2— 36773

144 2801

To accomplish the several objects of my invention,
I provide a character 10 which, in the present instance, is
formed in the shape of a dog in sitting position upon its
hind legs 11. The front legs or paws 12 of the dog are
arranged with respect to the body 13 thereof so as to provide

an undercut 14. The paws 12 slightly depend into the dish
16 so that the dish and the body 13 cannot be easily moved
apart.

Formed through the body 13 is a channel or passage 15. The undercut 14 is of such depth as permits
the bowl or dish 16 to be positioned with respect to the
body 13 with the edge portion 17 disposed within the
undercut 14 beneath the paws 12, with the channel 15
communicating with the interior of the bowl 16. By reason of the character of the wall 18 of the cut-out
portion, bowls of various heights may be used, such as
indicated at 19. This follows from the fact that the curved wall 18 permits the positioning of bowls of various heights within the undercut, with the interior
of the bowl communicating with the channel 15 so that
food or liquid passing through the channel 15 will move
or flow into the bowl without spilling therefrom.

—3— 36773

145 2802

The head 20 of the dog is normally supported
in spaced relation with respect to the neck portion 21
thereof with the portion 22 of the head slightly over-
lapping the nape 23 of the neck, whereby the overlapping
portion 22 of the head 20 will contact the nape of the
neck to limit the movement of the head 20 upwardly.

The head 20 is supported for vibratory or

oscillatory movement upon the body 10 by means of a
shaft 24, one end of which is fixedly embedded in the
head 20 as at 25 and the opposite end 26 of which is removably
projected in an opening 27 formed in the body 13.

Portions of the head and body are removed to provide clearance between the head and body and the
shaft 24 as at 28. This clearance permits the head to
vibrate or oscillate vigorously when contacted by the
end of a spoon 29.

As before stated, the object of this invention is two-fold: First, to provide amusement for a child
during eating, and, second, to stimulate eating of the
food by the child. This may result from the fact that
the child is instructed or suggested to give spoonfuls
of food alternately to itself and the dog or other character.

—4— 36773

146 2803

The head of the dog normally is positioned with
H. S. respect to the body ~~such~~ *(SO) that the jaws 30 and ~~30'~~ *(31) of the
dog are in partially open, or "begging", position, being
spaced apart a sufficient distance to permit initial insertion of the end of the spoon between the jaws 30 and
H. S. ~~30'~~ *(31). As the child attempts to discharge the food from
per A the spoon into the mouth of the dog, the head 20 *(BY PRESSURE OF THE SPOON 29 AGAINST THE JAW 30) will be
" " ~~moved~~ *(TILTED) rearwardly *(AGAINST

*Matter in parentheses inserted.

THE ACTION OF THE SHAFT 24). When ~~the~~ *(THIS PRESSURE OF THE) spoon is removed from ~~contact~~

" " } *(JAW 30) ~~with the head,~~ the shaft 24, being of
" B } resilient material,
will cause the head to vigorously vibrate or oscillate to

" B ~~stimulate~~ *(SIMULATE) eating action by the dog. Food deposited in the

H. S. mouth of the dog between the paws 30 and ~~30'~~ *(31) will be guided.

H. S. to the channel 15 by the jaw 30', which is concave transversely to provide a groove 31' leading to the channel 15,
and such food will pass through the channel 15 back into
the bowl 16. To a great extent, the overlapping portion
22 of the head will serve to prevent food from passing
rearwardly out between the head of the dog and the body
thereof.

While I have illustrated the character in the form of a dog, it is manifest that the character may take
other forms of animals.

Inasmuch as the shaft 24 is fixedly secured to the head 20, the head may be removed by withdrawing the end
26 of the shaft from the opening 27 for cleansing purposes.

D
—5— 36773

147 2804

It will be noted that the relative position between the jaws of the head 20 and the dish 16 is such
that the jaws project over the rim of the bowl or dish

* Matter in parentheses inserted.

so that any food spilled during the feeding of the dog
or other character, will fall back into the bowl 16.

While I have illustrated and described the preferred form of construction for carrying my invention
into effect, this is capable of variation and modification
without departing from the spirit of the invention. I,
therefore, do not wish to be limited to the precise details
of construction set forth, but desire to avail myself of
such variations and modifications as come within the scope
of the appended claims.

—6— 36773

148 2805

Having thus described my invention, what I claim as new and desire to protect by Letters Patent
is:

1. A child's combination appetite-stimulating and amusement device comprising a body having an undercut
portion formed therein for the reception of the edge portion of a dish and having a channel therein inclined
downwardly and forwardly toward the dish for communication with said dish, said body having a protruding jaw
portion providing a rest for the end of a spoon delivering
material to said channel, a head for said body and arranged
over said channel and having a jaw portion in spaced
confronting relation with respect to the jaw portion

of said body and adapted to be engaged by the end of
said spoon and tilted relative to said body by said spoon, and means connecting the head to the body for
oscillatory movement with respect to the body when said
spoon is moved from engagement with respect to said head.

7 36773

149 2806

2. A child's combination appetite-stimulating and amusement device comprising a body having an undercut
portion formed therein for the reception of the edge portion of a dish and having a channel therein inclined downwardly and forwardly toward the dish for communication with said dish, said body having a protruding jaw
portion providing a rest for the end of a spoon delivering material to said channel, a head for said body and
arranged over said channel and having a jaw portion in
spaced confronting relation with respect to the jaw portion of said body and adapted to be engaged by the
end of said spoon and tilted relative to said body by
said spoon, and means connecting the head to the body
for oscillatory movement with respect to the body when
said spoon is moved from engagement with respect to said
head, said means including a flexible shaft fixedly secured to the head and removably inserted in an opening
formed in the body.

8 36773

150 2807

3. A child's combination appetite-stimulating and amusement device comprising a body having an undercut portion formed therein for the reception of the edge portion of a dish and having a channel therein inclined downwardly and forwardly toward the dish for communication with said dish, said body having a protruding jaw portion providing a rest for the end of a spoon delivering material to said channel, a head for said body and arranged over said channel and having a jaw portion in spaced confronting relation with respect to the jaw portion of said body and adapted to be engaged by the end of said spoon and tilted relative to said body by said spoon, and means connecting the head to the body for oscillatory movement with respect to the body when said spoon is moved from engagement with respect to said head, said head having a portion opposite the jaw portion thereof disposed in overlapping relation with respect to an adjacent portion of said body.

9 36773

151 2808

4. A child's combination appetite-stimulating and amusement device comprising a character simulating a dog in sitting position upon its hind legs with its front legs projecting forwardly over a cut-out portion provided

in the body for the reception of the edge portion of a
dish, with the ends of the front legs projecting over
the rim of the dish, said body having an inclined down-
wardly extending channel formed therein for com-
munication
with said dish and said body being provided with a jaw
portion providing a rest for the end of a spoon, a head
for said body providing a jaw portion in con-
fronting
relation with respect to the jaw of said body and adapted
for engagement with said spoon, a flexible shaft connecting
the head to the body, said head being adapted to be tilted
upwardly and away from said body by said spoon and when
said spoon is disengaged from said head, said flexible
shaft serving to oscillate said head to simulate eating
action.

CG

10 36773

152 2810

Sole

## OATH, POWER OF ATTORNEY, AND PETITION.

Being duly sworn, I, Ben B. Manaster, depose and say that I am a citizen of The United States of America, residing at 663 West Washington Street, Chicago, Illinois; that I have read the foregoing specification and claims and I verily believe I am the original, first, and sole inventor of the invention or discovery in

Child's Combination Appetite-Stimulating and Amusement Devices

described and claimed therein; that I do not know and do not believe that this invention was ever known or used before my invention or discovery thereof, or patented or described in any printed publication in any country before my invention or discovery thereof, or more than one year prior to this application, or in public use or on sale in the United States for more than one year prior to this application; that this invention or discovery has not been patented in any country foreign to the United States on an application filed by me or my legal representatives or assigns more than twelve months before this application; and that no application for patent on this invention or discovery has been filed by me or my representatives or assigns in any country foreign to the United States, except as follows:

And I hereby appoint Clarence E. Threedy, 111 West Washington Street, Chicago 2, Illinois, Registration No. 11,702, my attorney or agent with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent Office connected therewith.

Wherefore I pray that Letters Patent be granted to me for the invention or discovery described and claimed in the foregoing specification and claims, and I hereby subscribe my name to the foregoing specification and claims, oath, power of attorney, and this petition, this 24th day of June, 1948.

Inventor:
Ben B. Manaster,
Post Office Address:
663 West Washington Street,
Chicago, Illinois.

State of Illinois. }
County of Cook. } ss.

Before me personally appeared Ben B. Manaster, to me known to be the person described in the above application for patent, who signed the foregoing instrument in my presence, and made oath before me to the allegations set forth therein as being under oath, on the date and year aforesaid.

Katherine A. Yergy,
(Seal) *Notary Public.*

This form may be executed only when attached to a complete application as the last page thereof.

Approved Single Signature Form
Sole Inventor.

939

11 36773

153 Patent drawing, Patent No. 2,453,922—see index.

154 (Stamps) Mail Division Sep-1 1948 U. S. Patent Office. U. S. Patent Office Received Sep-9 1948 Div. 57.

Serial No. 36,773 Paper No. 3

Petition to Commr. to make "Special".
Mr. Moore

IN THE UNITED STATES PATENT OFFICE

Division 57

In re Application of
Ben B. Manaster
Serial No. 36,773
Filed July 2, 1948

For: Child's Combination Appetite-Stimulating and Amusement Device

To the Hon. Commissioner of Patents:

## PETITION TO MAKE SPECIAL.

Your petitioner, Crest Specialty (Not Inc.), a copartnership having its principal place of business at Chicago, Illinois, by its attorney, Clarence E. Threedy, represents that it has the exclusive license and right to manufacture, vend and sell the invention described and claimed in the above-entitled application, by an instrument in writing from the inventor, Ben B. Manaster; that petitioner is desirous of manufacturing and selling the device of said application; that it has produced samples of said device, submitted the same to the trade, and has determined thereby that there is a substantial market for the said device; that petitioner, who has a Dun & Bradstreet rating of $75,000-$125,000, is financially able, and has adequate manufacturing facilities in the nature of its own plant employing 78 persons to manufacture said device, and is otherwise ready and willing to proceed with the manufacture and sale of said device provided the necessary investment for tools, dies, jigs, injection molds, advertising and other expenditures preliminary and necessary to said manufacture and sale can be afforded the protection of Letters Patent on

155 said device in accordance with the claims of said application; that the allowance and patenting of the claims of said application will be adequate inducement for petitioner to proceed with the manufacture and sale of said device and make said investment; that petitioner will, upon the request of the Commissioner of Patents, report under oath of a member of the petitioner partnership as to the number of said devices manufactured and sold, as well as the extent to which employment of labor was increased and the amount of money expended in said manufacture, within three months after the allowance of a claim on the invention of said application (or reversion of the application to ordinary status).

Wherefore, your petitioner prays that the said application may be made special in accordance with the rules and laws provided and had in such cases, and your petitioner submits in support of this petition the affidavit of a member of the petitioner partnership, and of its patent attorney, showing in fact that petitioner is ready, willing and able to proceed with the manufacture and sale of said device, the expenditure of the necessary monies in so doing, and that the public will benefit by such manufacture as a result of said expenditures as well as increased employment in said manufacture and sale and the commerce in the sale of said device, and also that the claims of said application are allowable over the prior art, and your petitioner ever prays.

Crest Specialty (Not Inc.),
By Sol Eliot,
*A Member.*

Clarence E. Threedy,
*Attorney for Petitioner.*

Chicago, Illinois.

—2—

156 (Stamps) Mail Division Sep-1 1948 U. S. Patent Office. U. S. Patent Office Received Sep-9 1948 Div. 57.

IN THE UNITED STATES PATENT OFFICE

Division 57.

In re application of
Ben B. Manaster
Serial No. 36,773
Filed July 2, 1948

For: Child's Combination Appetite-Stimulating and Amusement Device

Hon. Commissioner of Patents:

## AFFIDAVIT OF SOL ELIOT IN SUPPORT OF PETITION TO MAKE SPECIAL.

State of Illinois, } ss.
County of Cook. }

I, Sol Eliot, being duly sworn, according to the law, depose and say that I am of lawful age and a citizen of the United States and a resident of Chicago, Illinois, and a member of Crest Specialty (Not Inc.), a copartnership, named in the petition hereto attached; that said petitioner, Crest Specialty (Not Inc.), has the exclusive license and right to manufacture, vend and sell the invention described and claimed in the above-entitled application, by an instrument in writing from the inventor, Ben B. Manaster; that said petitioner is ready, willing and able to manufacture and sell the device of said application; that said petitioner has produced samples of said device, submitted the same to the trade, and determined thereby that there is a market for the said device and that said device can be sold, distributed and otherwise put into commerce in large numbers, to-wit, ninety thousand (90,000) per month; that in order for peti-



157 tioner to manufacture and sell said devices, it will be obliged to expend a large sum of money, to-wit, about Twenty Thousand Dollars ($20,000) for the necessary in-

jection molds, and other tools, dies, jigs, and the like, and Thirty-five Thousand Dollars ($35,000) in advertising, making a total of at least Fifty-five Thousand Dollars ($55,000) as an initial investment and expenditure in marketing said device; that I know and represent the fact to be that said petitioner is solvent and has assets including tangibles, accounts receivable, and funds on deposit far in excess of the proposed investment and wholly adequate to undertake the manufacture and sale of the device of said application in accordance with the representations of said petition and this affidavit; that said petitioner has manufacturing facilities including its own plant employing seventy-eight (78) persons, for the manufacture of said device; that the petitioner is ready to undertake the expenditure of said sum for the manufacture of said device, provided, however, that the same is first protected by Letters Patent or allowance of a claim or claims in accordance with said application; that about thirty-two (32) persons will be given employment if and when said manufacture and sale is undertaken; that by authorization of the members of the copartnership, petitioner herein, I obligate petitioner to manufacture said device in quantity immediately upon the allowance of a claim or claims which will protect the investment; that I have been informed by Clarence E. Threedy, the attorney of record in said application and patent attorney for the petitioner, that he believes the claims of said application define patentability and that said application should be in condition for allowance when acted upon; that said petition is well founded and the facts

—2—

16 36773

158 therein true and correct to the best of my knowledge and belief.

Further affiant sayeth not.

Sol Eliot.

Subscribed and sworn to before me this 2nd day of August, 1948.

Katherine A. Yergy,
*Notary Public.*

(Seal)

—3—

17 36773

159 (Stamps) Mail Division Sep-1 1948 U. S. Patent Office. U. S. Patent Office Received Sep-9 1948 Div. 57.

IN THE UNITED STATES PATENT OFFICE

Division 57

In re Application of
Ben B. Manaster
Serial No. 36,773
Filed July 2, 1948

For: Child's Combination Appetite-Stimulating and Amusement Device

To the Hon. Commissioner of Patents:

## AFFIDAVIT OF CLARENCE E. THREEDY IN SUPPORT OF PETITION TO MAKE SPECIAL

State of Illinois, } ss.
County of Cook. }

I, Clarence E. Threedy, being duly sworn, according to law, depose and say that I am of lawful age, a citizen of the United States of America, and a resident of Chicago, Illinois; that I am the attorney of record in the above-entitled application and attorney for Crest Specialty (Not Inc.), petitioner herein; that said petitioner has the exclusive license and right to manufacture, vend and sell the invention described and claimed in the above-entitled application; that I know the contents of the annexed petition to make special and the contents of the affidavit of Sol Eliot in support of said petition, and that the factual representations therein are to the best of my knowledge and belief true and correct; that I am familiar with the art to which said application and the invention thereof appertains and have caused to be made a careful and thorough search of said art to determine the patentability of the claims of said application and that as a result of said search I believe that



160 said claims define patentability over the prior art and that said application should be in condition for allowance upon examination; that I believe and assert the fact

to be that the petitioner is financially responsible; that it has adequate funds and manufacturing facilities to undertake the manufacture and sale of said device, and that the petitioner is ready to undertake the manufacture and sale of said device provided a claim or claims of said application are first allowed or patented; and it is my opinion that the public will benefit by the expenditure of monies necessary to the manufacturing and sale of said device and the resulting commerce in said device as well as the increased employment of labor in the manufacture of said device, and that therefore said petition is well founded.

Further affiant sayeth not.

Clarence E. Threedy.

Subscribed and sworn to before me this 27th day of August, 1948.

Katherine A. Yergy,
*Notary Public.*

(Seal)

161 (Stamp) U. S. Patent Office Commissioner's Office B Sep 9 1948 Copy mailed.

Serial No. 36,773 Paper No. 4
Pet. to Commr. to make "Special" granted.

Address Only
The Commissioner of Patents
Washington, D. C.

DEPARTMENT OF COMMERCE
United States Patent Office
Washington

September 9, 1948

Ex parte Ben B. Manaster
Serial No. 36,773
Filed July 2, 1948
Child's Combination Appetite-Stimulating and Amusement Devices.
} Petition to Make Special

The petition to make this case special has been considered.

If the examiner can make this case special without prejudice to any possible interfering application, he is authorized to do so for the first action. Should the application be rejected, the case will not be considered special for the subsequent action unless the applicant promptly makes a bona fide effort to place the case in condition for allowance even if it is necessary to have an interview with the examiner to accomplish this purpose.

The petition is granted to the extent indicated.

Thomas F. Murphy,
*Assistant Commissioner.*

Clarence E. Threedy
111 West Washington Street
Chicago 2, Illinois

162 Room 5886 sh/wv Paper No. 5

Address only The Commissioner of Patents, Washington 25, D. C.

All communications respecting this application should give the serial number, date of filing, and name of the applicant.

DEPARTMENT OF COMMERCE

United States Patent Office

Washington

Please find below a communication from the Examiner in charge of this application.

Lawrence C. Kingsland,
*Commissioner of Patents.*

(Stamp) U. S. Patent Office Sept 13 1948 Mailed.

Division: 57
Applicant: Ben B. Manaster
Ser. No. 36773
Filed July 2, 1948
For Child's Combination
Appetite-Stimulating
And Amusement Devices

Clarence E. Threedy
111 West Washington Street
Chicago 2, Ill.

This application has been examined.

The drawing and specification do not fully agree. The specification states that the head will oscillate after the spoon is removed from between the jaws, while the drawing does not show structure making the oscillation possible.

The drawing especially Figue 3 should be corrected to show clearance between the bottom of the head and top of the body to allow the head to oscillate.

Also, Figure 2 does not agree with Figure 3, the back of the neck in Figure 2 being shown as extending substantially horizontally and the jaw curving downwardly to the neck, while in Figure 3 there is a straight line connecting the jaw and back of the neck.

The claims are allowed.

Further prosecution before the Primary Examiner is closed under Ex parte Quayle 1935 C. D. 11.

Arthur B. Miller,
*Examiner.*

21 36773

163 Serial No. 36,773 Paper No. 6

Amendment A

(Stamps) Mail Division Sep 17 1938 U. S. Patent Office. U. S. Patent Office Received Sep 20 1948 Div. 57.

IN THE UNITED STATES PATENT OFFICE

Div. 57 Room 5886

Paper No. 6

Ben B. Manaster
Serial No. 36773
Filed July 2, 1948

For: Child's Combination Appetite-Stimulating and Amusement Devices

Hon. Commissioner of Patents
Washington 25, D. C.

Sir:

In response to the Official Action of September 13, 1948, please amend the above-entitled application as follows:

In the specification:

Page 5, line 7, after "20" insert —by pressure of the spoon 29 against the jaw 30—; line 8, cancel "moved" and substitute therefor —tilted—; same line, after "rearwardly" insert —against the action of the shaft 24—; same line, before "spoon" cancel "the" and substitute therefor —this pressure of the—; same line, cancel "contact"; line 9, cancel "with" and substitute therefor —jaw 30—.

(Notation) Entered K. R.

Permission is respectfully requested to amend the drawings as shown in the print attached hereto and pursuant to letter to the Official Draftsman.

(Notation in left-hand margin) Letter for C.

## REMARKS.

The specification has been amended to bring out more clearly that the jaw 30 is tilted by pressure of the spoon thereagainst and that when pressure of the spoon is removed from the jaw 30 the resilient shaft 24 will oscillate or vibrate the head for the purposes stated in the specification.

22 36773

164 This amendment has been made to meet the objection set forth in the second paragraph of the above referred to Official Action.

Figs. 2 and 3 of the drawing have been amended to meet the objections set forth in the third and fourth paragraphs of the above-entitled application.

This application now appears to be in condition for allowance.

Respectfully submitted,
Ben B. Manaster,
By Clarence E. Threedy,
*His Attorney.*

Chicago, Illinois
September 16, 1948

23 36773

165 Serial No. 36,773 Paper No. 7

Letter (to Defts) (& print)
1 print

(Stamps) Mail Division Sep 17 1948 U. S. Patent Office. U. S. Patent Office Received Sep 20, 1948 Div. 57.

IN THE UNITED STATES PATENT OFFICE
Div. 57 Room 5886

Paper No. 6-A

Ben B. Manaster
Serial No. 36773
Filed July 2, 1948
For: Child's Combination Appetite-Stimulating and Amusement Devices

Hon. Commissioner of Patents
Washington 25, D. C.

Sir:

Attention of Official Draftsman

The Official Draftsman is respectfully requested to amend the drawings of the above-entitled application in the following respects:

Fig. 2 is to be amended as shown in red ink.

Fig. 3 is to be amended pursuant to the illustration on the vellum sketch attached to the print.

These amendments are to be made upon approval of the Examiner in charge of this application, and the cost of such amendments is to be applied to counsel's account.

Respectfully submitted,
Ben B. Manaster,
By Clarence E. Threedy,
*His Attorney.*

(Notation) OK H. S. 9/21/48.
Chicago, Illinois
September 16, 1948
CET:KY

Govan

(Stamps) Received in Div. C Sep 22 1948. Correction Ordered 2.00 Sep 22 1948 Account. Corrected Oct 8 1948.

24 36773

166 Patent drawing, Patent No. 2,453,922—see index.

167 181—Rev.

Sh/wv 36773

Address Only
The Commissioner of Patents
Washington 25, D. C.

(Stamp) U. S. Patent Office Oct 15 1948 Mailed.
Ben B. Manaster

DEPARTMENT OF COMMERCE

United States Patent Office

Washington

Your application for a patent for an Improvement in Child's Combination Appetite-Stimulating and Amusement Devices, filed July 2, 1948 has been examined and Allowed with 4 claims.

The final fee, Thirty Dollars ($30), With One Dollar ($1) Additional For Each Claim Allowed In Excess of 20 (no less sum can be accepted) must be paid not later than 6 Months from the date of this present notice of allowance. If the final fee be not paid within that period, the patent will be withheld; See Revised Statutes, Section 4885 As Amended By Act Of Congress Approved August 9, 1939.

The office delivers patents upon the day of their date, on which date their term begins to run. The preparation of the patent for final signing and sealing will require about 4 weeks, and such work will not be begun until after payment of the necessary final fee.

When the final fee is paid, there should also be sent, Distinctly And Plainly Written, the name of the Inventor, Title Of The Invention, And Serial Number As Above Given, Date Of Allowance (which is the date of this circular), Date Of Filing, and, if assigned, the Names Of the Assignees.

If it is desired to have the patent issue to an Assignee Or Assignees, an assignment containing a Request to that effect, together with the Fee for recording the same, must be filed in the office on or before the date of payment of the final fee.

The final fee will Not be received from other than the applicant, his assignee or attorney, or a party in interest as shown by the records of the Patent Office.

Respectfully,
Lawrence C. Kingsland,
~~*Casper W. Ooms,*~~
*Commissioner of Patents.*

Clarence E. Threedy
111 West Washington Street
Chicago 2, Ill.

Uncertified Checks Will Not Be Accepted.



168 Paper No. 8

Serial No. 36,773
2809

List of References

## REFERENCES CITED

The following references are of record in the patented file of this patent:

United States Patents

| Name | Number | Date |
|---|---|---|
| No references cited. | | |

Foreign Patents

| Country | Number | Date |
|---|---|---|

Other References

169 Div. 57—Room 5886—HS/kr Paper No. 9

Address only The Commissioner of Patents, Washington 25, D. C. All communications respecting this application should give the serial number, date of filing, and name of the applicant.

DEPARTMENT OF COMMERCE

United States Patent Office

Washington

(Stamp) U. S. Patent Office —B— Oct 15 1948 Mailed.

Please find below a communication from the Examiner in charge of this application.

Lawrence C. Kingsland,
*Commissioner of Patents.*

Division: 57
Applicant: Ben B. Manaster
Ser. No. 36,773
Filed July 2, 1948
For Child's Combination Appetite-Stimulating and Amusement Devices.

Clarence E. Threedy
111 West Washington St.,
Chicago 2, Illinois

In accordance with the provisions of Order No. 2308, dated March 12, 1917, which reads in part as follows:

> Obvious informalities in the application may be corrected by the examiner, but said correction must be in the form of an amendment, approved by the Principal Examiner in writing, placed in the file, and made a part of the record. The changes specified in the amendment will be entered by the clerk in the regular way.

the changes, hereinafter specified, are made by the examiner in the application identified above.

Should these changes not be satisfactory to the applicant, appropriate amendment may be proposed under the provisions of Rule 78, provided the specification has not been printed.

The application has been amended as follows:

On page 5, line 9, the words "the head" have been canceled.

In line 11, same page, "stimulate" has been changed to —simulate—.

(Notation) Entered K. R.

Arthur B. Miller,
*Examiner, Div. 57.*

H. S.

28 36773

170 Oct 18-48 67298 Bck 30.00

Ck. 30.00 19-18-48 B—$30.00 ck.

(Stamp) Mail Division Oct 18 1948 U. S. Patent Office.

327

FINAL FEE PAID TO THE COMMISSIONER OF PATENTS.

(Be careful to give correct Serial No.)

Serial No. 36773 (Div 57)

Inventor: Manaster
Patent to be Issued to As of record
Name of Invention, as Allowed: Child's Appetite Stimulating Device

Date of Payment: Oct 18, 1948
Fee: $30
Date of Filing:
Date of Circular of Allowance: Oct 11/48

The Commissioner of Patents will please apply the accompanying fee as indicated above.

Clarence E. Threedy,
*Attorney.*

Send Patent to Attorney of record.

Final fees will not be received from other than the applicant, his assignee or attorney, or a party in interest as shown by the records of the Patent Office, Nor Will They Be Applied In Pending Applications.

29 36773

171-173 Patent No. 2,453,922—see index.

174 UNITED STATES DISTRICT COURT

District of Northern Illinois—Eastern Division

(Stamp) Commissioner Feb 9 1949 of Patents.
Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (42 Stat. L. 392), you are advised that there was filed on the 30th day of December, 1948, in this court an action, suit, or proceeding No. 48 C 1946, entitled:

Name Crest Specialty (Not Inc.), Plaintiff,
Address 663 W. Washington Blvd., Chicago, Ill.

*versus*

Name Topic Toys, Inc., and Eoina Nudelman, Defendant,
Address 174 W. Jackson Blvd., Chicago, Ill.; 4 East Ohio St., Chicago, Ill.,

brought upon the following patents:

| | Patent No. | Date of Patent | Patentee |
|---|---|---|---|
| 1 | 2,455,266 | 11-30-48 (on or about) | Eoina Nudelman |
| 2 | 2,453,922 | 11-16-48 | Ben B. Manaster |
| 3 | ..... | ..... | ..... |
| 4 | ..... | ..... | ..... |
| 5 | ..... | ..... | ..... |

In the above-entitled case, on the ..... day of ....., 193....., the following patents have been included by .....
(insert amendment, answer, cross bill, or other pleading):

| | Patent No. | Date of Patent | Patentee |
|---|---|---|---|
| 1 | ..... | ..... | ..... |
| 2 | ..... | ..... | ..... |
| 3 | ..... | ..... | ..... |
| 4 | ..... | ..... | ..... |
| 5 | ..... | ..... | ..... |

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In Witness Whereof I have affixed my hand this 7th day of February, 1949, at Chicago, Ill.

Roy H. Johnson,
*Clerk of said Court.*
By Marguerite Gelman,
*Deputy Clerk.*

175 UNITED STATES DISTRICT COURT

District of Northern Illinois—Eastern Division

(Stamp) Commissioner Jun 20 1949 of Patents.

Honorable Commissioner of Patents,
Washington, D. C.

Sir:

In compliance with the Act of February 18, 1922 (42 Stat. L. 392), you are advised that there was filed on the 30th day of December, 1948, in this court an action, suit, or proceeding No. 48 C 1946, entitled:

Name Crest Specialty (Not Inc.), Plaintiff,
Address 663 W. Washington Blvd., Chicago, Ill.

*versus*

Name David C. Trager* d/b/a Topic Toys, Inc., and Eoina Nudelman, Defendant,
Address 174 W. Jackson Blvd., Chicago, Ill.; 4 East Ohio St., Chicago, Ill.,

brought upon the following patents:

| | Patent No. | Date of Patent | Patentee |
|---|---|---|---|
| 1 | 2,455,266 | 11-30-48 (on or about) | Eoina Nudelman |
| 2 | 2,453,922 | 11-16-48 | Ben B. Manaster |
| 3 | ..... | ..... | ..... |
| 4 | ..... | ..... | ..... |
| 5 | ..... | ..... | ..... |

In the above-entitled case, on the ..... day of ....., 193....., the following patents have been included by .....
(insert amendment, answer, cross bill, or other pleading):

| | Patent No. | Date of Patent | Patentee |
|---|---|---|---|
| 1 | ..... | ..... | ..... |
| 2 | ..... | ..... | ..... |
| 3 | ..... | ..... | ..... |
| 4 | ..... | ..... | ..... |
| 5 | ..... | ..... | ..... |

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

In Witness Whereof I have affixed my hand this 15th day of June, 1949, at Chicago, Ill.

Roy H. Johnson,
*Clerk of said Court.*
By Marguerite Gelman,
*Deputy Clerk.*

* Order approving stipulation amending the original petition herein. Answer to stand. This case is hereby consolidated with cause #49 C 8—Igoe, J. (Entered March 4, 1949.)



176 36773

1948

Contents

1. Application √ papers.
2. Print (1 sht.), July 12, 1948
3. Petition to Commr. to make "Special", Sept. 1, 1948
4. Pet. to Commr. to make "Special" granted, Sept. 9, 1948
5. Letter Sep. 13, 1948
6. Amendment A, Sept. 17, 1948
7. Letter (to Defts) & print, Sept. 17, 1948
8. List of References (Form 480)
9. Exr's Amdt. B, Oct. 15, 1948
10. Notice of Suit Feb. 9-1949
11. Notice of Suit June 20-1949

# PLAINTIFF'S CHART
## SHOWING
## INFRINGEMENT OF CLAIM 3
## OF NUDELMAN PATENT

AN AMUSEMENT DEVICE COMPRISING A FIGURE FORMED TO SIMULATE A LIVING CREATURE, SAID FIGURE COMPRISING

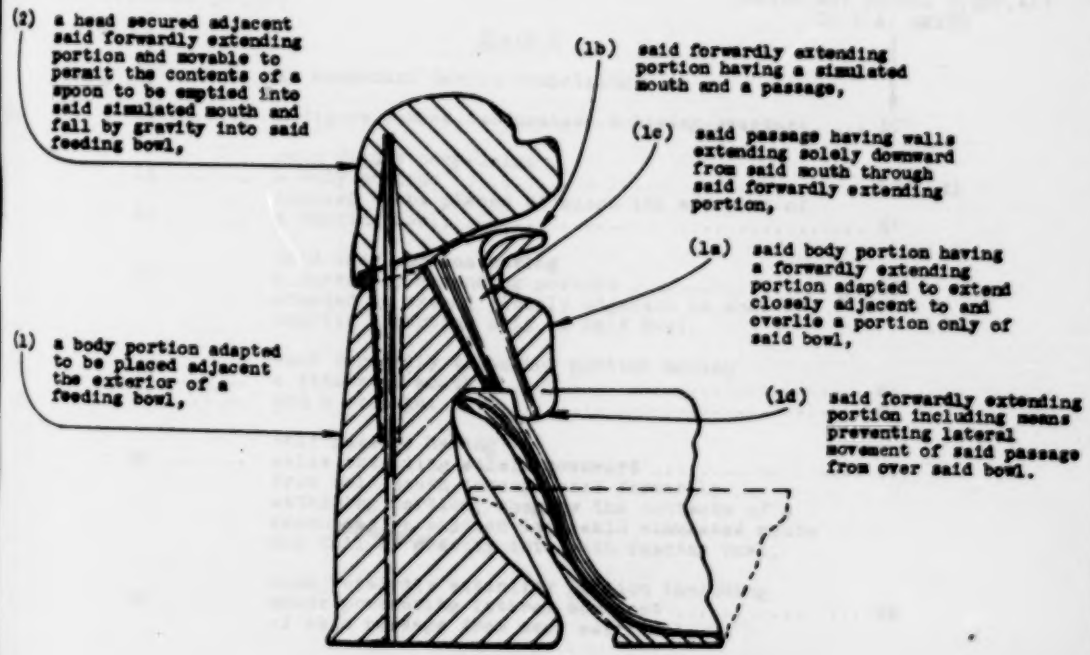



*Fig. 3.* (MANASTER PAT. NO. 2,453,922) ILLUSTRATING ACCUSED DEVICE

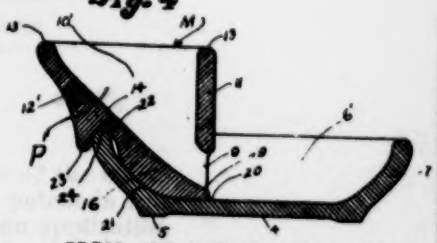
No. 49 C 8
DAVID C. TRAGER, d.b.a. Topic Toys, and EOIMA NUDELMAN, an individual,
Plaintiffs,
v.
CREST SPECIALTY (Not Inc.) a limited partnership consisting of BEN B. MANASTER, ROSE MANASTER, CAROL RUTH MANASTER, and SOL ELIOT,
Defendants.



Fig. 5

PATENT 2,455,266 IN SUIT

Fig. 4




PRIOR ART PATENT 2,207,417 TO I.A. SMITH

CLAIM 2

An amusement device comprising

10 ..... a figure formed to simulate a living creature, ... 10'

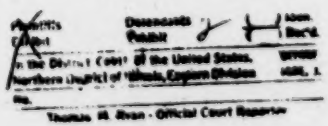
said figure comprising
16 ..... a body portion ..... 12', 23
adapted to be placed adjacent the exterior of
22 ..... a feeding bowl, ..... 6'

said body portion having
27 ..... a forwardly extending portion ..... 16
adapted to extend closely adjacent to and overlie a portion only of said bowl,

said forwardly extending portion having
32 ..... a simulated mouth ..... M
24 ..... and a passage, ..... P

said passage having
25 ..... walls extending solely downward ..... 14
from said mouth through said forwardly extending portion, whereby the contents of a spoon may be emptied into said simulated mouth and fall by gravity into said feeding bowl,

said forwardly extending portion including
20 ..... means preventing lateral movement ..... 22
of said passage from over said bowl.



179 And to wit, on the 19th day of January, 1950, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

180 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—49-C-8) * *

## FINDINGS OF FACT.

1. Plaintiff Eoina Nudelman is the owner of the entire right, title, and interest in and to Nudelman patent in suit No. 2,455,266, issued November 30, 1948, on an application filed February 17, 1948, and entitled "Children's Amusement Device."

2. Plaintiff David C. Trager is now, and has been since May 12, 1948, the exclusive licensee under the patent in suit, and is engaged in the manufacture and sale of the patented device under the trade name Topic Toys.

3. Defendant Crest Specialty is a limited partnership consisting of defendants Ben B. Manaster, Rose Manaster, Carol Ruth Manaster, and Sol Eliot, all residents of the State of Illinois.

4. The Nudelman patent in suit is for a children's amusement device which provides stimulation for chil-
181 dren to eat, and which serves to encourage and educate them to eat, by providing an "eating" table companion which is fed from the same bowl, with the same spoon and the same food as the child. This device is not merely a toy, but is highly utilitarian in character and has decided educational and psychological value.

(a) The Nudelman patent in suit shows a simulated animal figure in the form of a small pig, having a body portion adapted to be positioned closely adjacent the exterior of a feeding bowl. The body portion has a forwardly extending portion projecting closely adjacent to the rim of the bowl and overlying a portion of the bowl. The forwardly extending portion assumes the form of the front paws or feet of the animal figure, and has a simulated mouth and a passage. The passage has walls extending solely downward from the mouth through the forwardly extending portion. A head is secured adjacent to the forwardly

extending portion, and is movable to permit the contents of a spoon to be emptied into the mouth and to fall by gravity into the feeding bowl. The forwardly extending portion has an undercut for engagement with a bowl, to prevent lateral separation of the animal figure from the bowl during feeding, so that food emptied into the animal's mouth will pass back immediately into the bowl. The portion of the animal figure overhanging the top of the bowl does not extend all the way into the bowl, and therefore the capacity or area of the bowl is not reduced in any way by virtue of the short downward wall extending from the mouth. The device of the patent in suit permits baby food emptied into the animal's mouth to immediately drop back into the bowl without clogging the passage and without wasting any food.

5. The inventive concept of Nudelman is well grounded in psychology. It takes full advantage of the process
182 of mimicry, which in the final analysis is the foundation of practically all methods of instruction employed for infant children. The Nudelman device was the first ever to teach the idea of providing an "eating" table companion for a young child which utilizes the psychological process of mimicry in providing the companion to be fed either by the mother or the child itself simultaneously with the feeding of the child. The feeding of the table companion with the same food and from the same bowl and the apparent appearance of the animal consuming food provides a stimulant for the child to do likewise.

6. It was of the essence of Nudelman's concept that the device, employed for the purpose of providing instruction and encouragement for the child, simulate a living creature comprehensible to a child, and have body, head, and mouth so that food could actually be fed to it, thereby creating the illusion of eating and thus stimulating, instructing, and encouraging the child to join the "eating" table companion and to eat.

7. It is recognized that many children in the early tender years are poor eaters and have to be encouraged and otherwise stimulated to eat by various artifices, and that this problem has existed for a long period of time. The device of the Nudelman patent in suit was directed toward solving that problem and is the first device of its character to aid in the solution of such a problem.

8. Prior to February 17, 1948, the efforts to deal with the problem of holding the interest of infant children dur-

ing feeding periods and of encouraging them to eat were fundamentally and basically quite different from the means employed by Nudelman. These prior attempts consisted of nothing more than the utilization of knives and forks with handles simulating living creatures or of deco-
183 rated dishes or bowls. L'Heureux patent No. 2,200,-696, dated May 14, 1940, and Ide patent No. 2,224,683, dated December 10th, 1940, disclose typical devices employed in the attempted solution of the problem which was dealt with by Nudelman.

9. Prior to February 17, 1948, there was a substantial demand for a device like that shown, described, and claimed in the Nudelman patent in suit. Defendant Sol Eliot, who had been in the business of manufacturing and selling related items for a number of years prior to 1948, found, as the result of a survey made by him, that there was a market in 1948, for a device like that shown and described in the Nudelman patent, and he estimated as of August, 1948, that such a device could be sold and distributed and otherwise put into commerce in large numbers, to-wit, 90,000 per month.

10. The device shown, described, and claimed in the Nudelman patent in suit was unique and ingenious and constituted a genuine improvement over any prior device either shown, described, or manufactured and sold in this country. Defendants have characterized their own device charged herein to infringe as incorporating a "sensational new idea" and as the "recognized new idea that makes children willing eaters." In their advertisements defendants have proclaimed that their device charged herein to infringe is sparked with cleverness, color, and imagination and is an "unusual" item. In the period from September, 1948, through September, 1949, plaintiff Trager has sold 191,368 feeding devices under the Nudelman patent in suit, this representing a retail sales dollar volume between $180,000.00 and $185,000.00.

11. Plaintiff Trager began the construction of molds for the commercial manufacture of the device shown, described, and claimed in the Nudelman patent in suit
184 on or about May 12, 1948. Prior thereto and thereafter he distributed handmade samples of the device to various prospective buyers, and by means of salesmen began the solicitation of orders therefor. Defendants derived the device herein charged to be infringed from the plaintiffs, it being admitted by defendant Ben B. Manaster

that the accused device was copied from the device of the plaintiffs.

12. After learning of the device of the Nudelman patent in suit, the defendant Ben B. Manaster filed an application for patent on July 2, 1948, which matured into patent No. 2,453,922, dated November 16, 1948. As filed, all of the claims of this application were specific and limited to the specific construction disclosed in the Manaster application in which the head of the animal was secured to the body portion thereof by means of a spring member or to a construction in which the head of the animal oscillated with respect to the body of the animal when engaged by a spoon. This patent is subsidiary and tributary to the patent in suit. Although the Nudelman and Manaster patents were copending, no interference therebetween was declared by the United States Patent Office under its Rules of Practice, for the reason that Manaster showed a different species from that of Nudelman, and because Manaster was claiming his species specifically whereas Nudelman was claiming the invention generically.

(a) Subsequent to the issuance of the Nudelman patent in suit, and prior to the bringing of this action, defendants have made and sold, within the Northern District of Illinois, devices like that of the Manaster patent and as exemplified by Plaintiff's Exhibit No. 2. This device which is charged as an infringement in this action consists of an animal figure in the form of a puppy. The body portion of the puppy is designed and intended to be positioned outside and closely adjacent to a feeding bowl.
185 The animal has a simulated mouth, and its front paws overhang the rim of the bowl and does not extend all the way into the bowl in such manner as to reduce the capacity or area of the bowl. A passage extends downward from the mouth through the front paws and is in open communication with the bowl. A head is secured adjacent the forwardly extending portion of the body, this head being movable to permit the contents of a spoon to be emptied into the mouth. The front paws of the animal have an undercut which engages the bowl and prevents lateral separation of the animal figure from the bowl during the feeding so that the food emptied into the animal's mouth will pass back immediately into the bowl. This device is admittedly one intended to encourage and stimulate infant children to eat. Thus in the Manaster patent it is stated that the device shown therein "will have the effect

of inducing the child to alternately feed itself and the character, thus stimulating the child to consume its food." It also appears from the said Manaster patent that the purpose of the undercut and the overhanging paws slightly depending into the bowl is that of preventing the bowl and the body portion from being easily moved apart.

13. Defendants' device accused herein responds to claims 2 and 3 of the Nudelman patent which are in suit, and constitutes an infringement of each of said claims.

14. Smith patent No. 2,207,417, dated July 9, 1940, entitled "Cereal Bowl", is relied upon by defendants as anticipating claim 2 of the Nudelman patent in suit. Together and in combination with other patents, such as No. 226,831 to Bowen, dated April 27, 1880, No. 843,024 to Livingston, dated February 5, 1907, No. 1,751,773 to Trosper, dated March 25, 1930, and No. 1,792,129 to Theodoropulos, dated February 10, 1931, this Smith patent 186 is also relied upon to negative novelty and invention in the structure of claim 3 of the patent in suit. Defendants also introduced in evidence, but did not have their patent expert explain or describe, Smith patent No. 2,170,-311, dated August 22, 1939; Shea patent No. 356,168, dated January 18, 1887, and MacMorris patent No. 516,354, dated March 13, 1894.

15. The Smith patent No. 2,207,417 does not, either alone or in combination with other patents, show the device of the Nudelman patent in suit to be lacking in novelty. The structure of Smith is not only entirely dissimilar to that of Nudelman, but the two devices are diametrically opposed in purpose and function.

(a) The Smith patent discloses a cereal bowl having a hopper or bin positioned inside thereof for separating the cereal and milk. The hopper or bin of the Smith patent is between one third to one half the size of the bowl. The hopper is placed inside and within the bowl and correspondingly reduces the capacity and size of the bowl. The hopper has an inclined wall extending upwardly and rearwardly of the bowl and has a side opening leading into the bowl. The hopper or bin is filled with cereal in the same manner as a storage bin, and milk is poured into the bowl. The hopper merely serves to separate and keep the cereal from contacting the milk so that the cereal is maintained in a crisp condition until eaten. In eating, the spoon is placed adjacent the side bottom outlet to gather the dry

cereal that drops from the bin in measured quantities, the spoon simultaneously taking up some of the milk in the bowl. The user thus eats a cereal which is momentarily saturated with the milk in the spoon.

(b) It is the avowed purpose of Smith, repeatedly stressed in the patent, to maintain precooked dry
187 cereals in the hopper and bin separated from the milk, thereby to retain original crispness and to aid digestion by more intensive mastication of food. The hopper of Smith was not designed or intended to perform the function of the device shown in the Nudelman patent. Moreover, it is contrary to the express purpose of the Smith device to return food to the hopper from the bowl. The device of the Smith patent has an object in view which is entirely different from that of Nudelman. It is used under radically different conditions to perform a function quite different from that of the Nudelman device, and it employs an antithetical principle of operation.

(c) A demonstration in court by defendants' patent expert of a model of the Smith patent presented by him showed that Smith is at least inoperative when employed for the purpose of repeatedly returning to the hopper one type of dry cereal mixed with milk.

(d) Defendants' patent expert admitted that it is contrary to Smith's express teachings to take spoonfuls of mixed cereal and milk from the bowl and put them back into the hopper. He also conceded that there is no suggestion or hint in the Smith patent of such an operation. He admitted that he was unable to find in the Smith patent any teaching of stimulating and encouraging infants to eat by psychology and mimicry. The reference in the Smith patent to holding the interest of children was conceded by defendants' expert to refer to a concept quite different from that of Nudelman.

(e) The testimony of defendants' patent expert in which he applied the language of claim 2 of the Nudelman patent in suit to the structure of Fig. 4 of the Smith patent must be rejected as lacking in verity. This testimony constituted an unreasonable distortion of the language
188 of the claim, and wholly failed to take into account the meaning and sense of the language, the disclosure of the patent in suit and its objects and purposes. Read upon the device of Fig. 4 of the Smith patent, claim 2 of the Nudelman patent in suit ceases to represent the in-

vention of Nudelman. Among other things, the main, central, or principal portion of Smith's hopper is within the bowl, and it cannot be said that the small portion of the wall 12 and the projection 23 which are exterior of the bowl, constitute the "body portion" of the hopper.

16. The other patents relied on by defendants are no more pertinent than Smith patent No. 2,207,417. None of those patents discloses or suggests the device and structure described and claimed in the patent in suit. While it is true that the Bowen, Livingston, Trosper, and Theodoropulos patents disclose hinged heads of various animal figures, none of these devices were designed or intended to serve as an "eating" table companion for a young child, and none purport to take advantage of the psychological proce..s of mimicry to encourage and stimulate infant children to eat. In their respective environments these hinged heads accomplish functions and purposes quite foreign to the function and purpose of the device of the patent in suit.

17. The conception and production of a device like that shown and described in the Nudelman patent in suit was beyond the skill of a mechanic, and required the exercise of inventive genius.

189 Conclusions of Law.

1. The Court has jurisdiction of the parties and of the subject matter.

2. The patent in suit was regularly issued by the United States Patent Office. Defendants in assailing it have a heavy burden of proof.

3. To anticipate the patent in suit—or to show that the device thereof was lacking in novelty—the prior patent must show the device or its substantial equivalent doing the same work in substantially the same manner as the patented device.

4. Patents cannot be anticipated by prior devices which might, by modification, be made to accomplish the function performed by the device of the patent in suit when those devices were not designed, adapted, or used to perform the same function and where the prior patent contains no suggestion of the way in which the result sought is accomplished.

5. Prior art patents are to be measured as anticipa-

tions by what is clearly and definitely expressed in them; they may not be reconstructed in the light of the invention in suit and given a significance and importance which in fact they did not have in the art; they may not be reconstructed in the light of later acquired knowledge and then used as a part of the prior art.

6. The conception and production of the device of the patent in suit required the exercise of invention and the presence of that invention is persuasively demonstrated by the evidence.

7. The patent in suit describes, and claims 2 and 3 claim, a new and highly utilitarian device which was inventive, involves a new principle and function, and achieves a beneficial result. It is therefore good and valid in law.

8. Each of claims 2 and 3 of the Nudelman patent in suit embodies and covers a device like that shown and
190 described in that patent. The language of the claims is clear and unambiguous and complies with the patent statute in particularly pointing out and claiming the improvement asserted as an invention.

9. The claims in suit are not limited to the exact details of the specifications, but include all substantial equivalents which do the same work in substantially the same way and accomplish substantially the same result.

10. Defendants' device herein accused as an infringement is substantially the same as that shown and described in the Nudelman patent in suit; it literally and in substance responds to the language of the claims in suit and infringes each of said claims.

11. The issuance of Manaster patent No. 2,453,922 does not create a presumption of non-infringement by the device shown and described therein.

12. The comparative utility of the patented device and the accused device is immaterial. That the accused device does not work as perfectly as plaintiffs' device does not avoid infringement.

13. Plaintiffs are entitled to judgment and to their costs as in such cases made and provided by law.

Enter:

Igoe,
*United States District Judge.*

January 19, 1950.

191 And afterwards, to wit, on the 26th day of January, 1950, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

192 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—49-C-8) * *

JUDGMENT.

This Cause having come on to be heard upon the pleadings and proofs, and having been argued by the parties, upon consideration thereof and upon the findings of fact and conclusions of law entered herein on January 19, 1950, it is

Ordered, Adjudged, and Decreed:

1. That claims 2 and 3 of United States Letters Patent No. 2,455,266, granted November 30, 1948, to Eoina Nudelman for "Children's Amusement Device," are good and valid in law.

2. That plaintiff Eoina Nudelman is the owner of all of the right, title, and interest in, to, and under said patent, and plaintiff David C. Trager, doing business as Topic Toys, is the exclusive licensee thereunder.

3. That the defendant Crest Specialty (not inc.), a limited partnership consisting of Ben B. Manaster, Rose Manaster, Carol Ruth Manaster, and Sol Eliot, has since the issuance of said United States Letters Patent No. 2,455,-266 infringed the said letters patent by manufacturing and selling within the Northern District of Illinois and else-
193 where, amusement devices embodying the inventions covered by claims 2 and 3 of the said letters patent in violation of the exclusive rights of plaintiffs under said claims.

4. That an injunction be issued out of and under the seal of this Court, pursuant to the prayer of the Complaint herein, directed to Ben B. Manaster, Rose Manaster, Carol Ruth Manaster, and Sol Eliot, permanently enjoining and restraining them, individually, and as copartners comprising the limited partnership known as Crest Specialty, their clerks, servants, agents, employees, and those in active concert or participation with them, and each and every one of

them, from directly or indirectly manufacturing or selling, or offering and advertising to manufacture or sell, amusement devices like the puppy figure included in Plaintiffs' Exhibit 2 or any colorable modification thereof or other device embodying the invention covered by claims 2 and 3 of United States Letters Patent No. 2,455,266, or in any way violating the rights of plaintiffs under said claims.

5. That plaintiffs recover from defendants the general damages which plaintiffs have sustained by reason of said infringement by said defendants of claims 2 and 3 of said United States Letters Patent No. 2,455,266 which shall be due compensation to plaintiffs for making or selling the said invention, not less than a reasonable royalty therefor; and that plaintiffs recover their costs and taxable disbursements to date.

6. That this cause be referred to Victor LaRue, Esq., as special master of this Court, to ascertain and report the amount of the general damages which have accrued to plaintiffs by reason of defendants' said infringement
194 of claims 2 and 3 of United States Letters Patent No. 2,455,266. The said special master shall have full power and authority, as provided under the Rules of Civil Procedure and without any limitation, to regulate all proceedings in every hearing before him and to require the production before him of evidence upon all matters embraced in this reference; and he shall forthwith proceed with said reference and take and receive the evidence presented by the parties and report his findings and conclusions thereon.

Enter:

Igoe,
*United States District Judge.*

195 And on the same day, to wit, the 26th day of January, 1950, came the Defendant, Crest Specialty (Not Inc.) by its attorneys and filed in the Clerk's office of said Court its certain Notice of Appeal, in words and figures following, to wit:

196 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

| | |
|---|---|
| David C. Trager, doing business as Topic Toys, and Eoina Nudelman, an individual, *Plaintiffs,* *vs.* Crest Specialty (Not Inc.), a limited partnership consisting of Ben B. Manaster, Rose Manaster, Carol Ruth Manaster, and Sol Eliot, *Defendants.* | Civil Action No. 49 C 8 |

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS UNDER RULE 73(b).

Notice is hereby given that Crest Specialty (Not Inc.), the defendant above named, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the judgment entered in the above-entitled cause on January 26, 1950.

Signed at Chicago, Illinois, this 26th day of January, 1950.

Clarence E. Threedy,
111 West Washington Street,
Chicago, Illinois,
*Attorney for Defendant.*

(Certificate of Mailing Attached Hereto):

197 United States of America, }
Northern District of Illinois. } ss.

Certificate of Mailing.

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that on January 26, 1950, in accordance with Rule 73 (b) of the Federal Rules of Civil Procedure a copy of the foregoing Notice of Appeal was mailed to

Max R. Kraus,
33 N. La Salle St.,
Chicago, Illinois.

Thiess, Olson & Mecklenburger,
77 W. Washington St.,
Chicago, Illinois.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, this 26th day of January, A. D., 1950.

Roy H. Johnson,
*Clerk,*

By Gizella Butcher,
*Deputy Clerk.*

(Seal)

198 And afterwards on, to wit, the 30th day of January, 1950, came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Statement of Points, in words and figures following, to wit:

199 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—49-C-8) * *

## STATEMENT OF POINTS.

Defendant, Crest Specialty (Not Inc.), intends to rely on the following points on its appeal to the Court of Appeals for the Seventh Circuit from the judgment entered in this cause on the 26th day of January, 1950, to-wit:

1. The court erred in finding and decreeing that defendant's device in evidence as Plaintiff's Exhibit 2 infringed each of claims 2 and 3 of the Nudelman patent in suit, No. 2,455,266 issued November 30, 1948.

2. The court erred in not finding and decreeing each of claims 2 and 3 of the Nudelman patent in suit, No. 2,455,266, invalid for want of invention and by reason of anticipation in view of the following prior art patents:

| Patent No. | Date | Patentee |
|---|---|---|
| 226,831 | April 27, 1880 | Bowen |
| 356,168 | January 18, 1887 | Shea |
| 516,354 | March 13, 1894 | MacMorris |
| 843,024 | February 5, 1907 | Livingston |
| 1,751,773 | March 25, 1930 | Trosper |
| 1,792,129 | February 10, 1931 | Theodoropulos |
| 2,170,311 | August 22, 1939 | E. P. Smith |
| 2,207,417 | July 9, 1940 | I. A. Smith |

200 3. The court erred in finding and decreeing claims 2 and 3 of the Nudelman patent in suit, No. 2,455,266, valid over the prior art hereinbefore listed.

4. The court erred in not dismissing the plaintiffs' complaint for want of equity.

Clarence E. Threedy,
*Attorney for Defendant.*

Chicago, Illinois.

Received a copy of the foregoing Statement of Points this 30 day of January, 1950.

Sidney Neuman,
Max R. Kraus,
*Attorneys for Plaintiffs.*

201 And on the same day, to wit, on the 26th day of January, 1950, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

202 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—49-C-8) * *

SUPERSEDEAS ORDER.

Now comes the defendant named in the above-entitled cause, by its attorney, Clarence E. Threedy, and prays for a supersedeas order as to all proceedings in this cause including injunction, accounting and costs during the pendency of an appeal to the United States Court of Appeals for the Seventh Circuit from the judgment heretofore entered in this cause;

Whereupon, it is ordered that upon the filing of a bond in the penal sum of Five Thousand ($5,000.00) Dollars with surety to be approved by the court, the said appeal shall operate as a supersedeas and all further proceedings in said cause, including the effect of the injunction, accounting and collection of costs shall be stayed during the pendency of said appeal.

Entered this 26th day of January, 1950.

Igoe,
*United States District Judge.*

203 And afterwards, to wit, on the 27th day of January, 1950, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

204 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—49-C-8) * *

Comes now the defendant by counsel and presents its supersedeas bond herein for approval and it appearing to the Court that said bond is properly conditioned and in the amount fixed by the Court, i. e., Five Thousand Dollars ($5,000.00), and that the sureties are good and sufficient security for said amount it is

Ordered that said bond be and it is hereby approved.

205 And on, to wit, the 27th day of January, 1950, there was filed in the Clerk's office of said Court a certain Bond on Appeal, in words and figures following, to wit:

206 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—49-C-8) * *

## BOND ON APPEAL.

Know All Men By These Presents:

That we, Crest Specialty (Not Inc.), a limited partnership consisting of Ben B. Manaster, Rose Manaster, Carol Ruth Manaster, and Sol Eliot, as principal, and Continental Casualty Company, as surety, are held and firmly bound unto David C. Trager, doing business as Topic Toys, and Eoina Nudelman, in the full and just sum of Five Thousand Dollars ($5,000.00) to be paid to the said David C. Trager, doing business as Topic Toys, and Eoina Nudelman, their attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 26th day of January, in the year of our Lord one thousand nine hundred and fifty.

Whereas, lately at a session of the District Court of the United States for the Northern District of Illinois, Eastern Division, in a case entitled David C. Trager, doing business as Topic Toys, and Eoina Nudelman, an individual, 207 Plaintiffs, *vs.* Crest Specialty (Not. Inc.), a limited partnership consisting of Ben B. Manaster, Rose Manaster, Carol Ruth Manaster, and Sol Eliot, Defendants, Civil Action No. 49 C 8, a judgment was rendered against said defendant, said defendant has filed or is about to file in the Clerk's Office of said District Court Notice of Appeal to the United States Court of Appeals for the Seventh Circuit, to reverse said judgment in the United States Court of Appeals for the Seventh Circuit, to be holden at Chicago within forty (40) days from date hereof.

Now, the condition of the above obligation is such that if the said Crest Specialty shall prosecute its appeal to effect and shall pay all costs which may be awarded to said David C. Trager and Eoina Nudelman and all damages or other award which may be given to said David C. Trager and Eoina Nudelman, then the above obligation to be void; otherwise to remain in full force and effect.

Sealed and delivered in presence of:

Crest Specialty (Not Inc.)
By Ben B. Manaster (Seal)
*A member of the partnership*

Continental Casualty Company
By Robt. Griffith (seal)
*Attorney-in-fact.*

Approved:

Igoe,
*United States District Judge.*

(Power of Attorney Attached But Not Copied.)

208 And on the same day to wit, on the 30th day of January, 1950, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

209 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—49-C-8) * *

ORDER.

Upon consent of the parties, it is hereby ordered that the original documentary exhibits designated by the parties hereto may be sent to the Clerk of the United States Court of Appeals for the Seventh Circuit in connection with the appeal of this case as a part of the transcript, and that the following original exhibits be certified to the said Clerk as physical exhibits:

Plf. Exh. 2—Def. box and contents consisting of puppy, bowl, spoon and fork, and cup.

Plf. Exh. 3—Plf. large box and contents consisting of piggy, bowl, fork and spoon, and rack for fork and spoon.

Plf. Exh. 4—Plf. small box and contents consisting of piggy and bowl.

Def. Exh. 3—Cereal bowl.

Def. Exh. 3a—Model of Fig. 4 of Smith patent 2,207,417.

Entered this 30th day of January, 1950.

Igoe,
*United States District Judge.*

Above order is approved and consented to:

Sidney Neuman,
Max R. Kraus,
*Attorneys for Plaintiff.*

Clarence E. Threedy,
*Attorney for Defendant.*

210 And on the same day to wit, the 30th day of January, 1950 came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Designation Of Record On Appeal in words and figures following, to wit:

211 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—49-C-8) • •

## DEFENDANT'S DESIGNATION OF RECORD ON APPEAL.

To the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

Pursuant to the Notice of Appeal filed in the above-entitled cause by defendant, Crest Specialty (Not Inc.), and pursuant to the Rules of Civil Procedure, you are hereby requested to authenticate and transmit to the Clerk of the U. S. Court of Appeals for the Seventh Circuit, copies of the following papers and original exhibits filed in the above-entitled cause, which papers and exhibits are hereby designated as the portions of the record, proceedings and evidence to be contained in the record on appeal, to-wit:

1. Complaint filed January 4, 1949.
2. Defendant's Answer filed February 4, 1949.
3. Stipulation dated October 11, 1949.
4. Transcript of the proceedings taken in open court at the trial, commencing with page 39 and ending with page 144, and the subject matter on page 198 beginning with line 3 thereof and ending with line 20 thereof.

212 5. Findings of Fact and Conclusions of Law entered by Judge Igoe January 19, 1950.
6. Judgment of District Court entered January 26, 1950.
7. Notice of Appeal.
8. Certificate of the Clerk of the District Court as to the names of the persons to whom copies of the notice of appeal were mailed and date of mailing.
9. Supersedeas order.
10. Supersedeas bond.
11. Defendant's statement of points on which it intends to rely on appeal.

12. This designation of record.

13. Order of District Court with reference to transmitting original exhibits to Clerk of U. S. Court of Appeals.

14. Certificate of the Clerk of the District Court.

15. Plaintiff's Paper Exhibits to be printed:

Plf. Exh. 1—Copy of Nudelman patent in suit 2,455,266.

Plf. Exh. 5—Plf. printed literature describing contents of its box.

Plf. Exh. 6—Tabulation of plaintiff's sales.

Plf. Exh. 7—Photograph of contents of plaintiffs' box.

Plf. Exh. 8—Plaintiff's circular.

Plf. Exh. 9—Newspaper advertisement of plaintiff.

Plf. Exh. 10—Plaintiff's photograph used for publicity purposes.

Plf. Exh. 11—Photostat of newspaper clippings.

Plf. Exh. 12—Photostat of Defendant's advertisement in "Toys & Novelties" for October 1948.

Plf. Exh. 13—Copy of Manaster patent 2,453,922.

Plf. Exh. 14—File wrapper of Manaster patent 2,453,922.

Plf. Exh. 15—Plaintiff's chart of comparison between claims of Nudelman patent in suit and defendant's device.

16. Plaintiff's physical exhibits:

Plf. Exh. 2—Defendant's box and contents consisting of puppy, bowl, spoon and fork, and cup.

Plf. Exh. 3—Plaintiff's large box and contents consisting of piggy, bowl, fork and spoon, and rack for fork and spoon.

Plf. Exh. 4—Plaintiff's small box and contents consisting of piggy and bowl.

213 17. Defendant's Paper Exhibits to be printed:

Def. Exh. 1—Book of Prior art consisting of copies of

Patent Nos. 226,831.
356,168.
516,354.
843,024.
1,751,773.
2,170,311.
2,207,417.

Def. Exh. 2—Defendant's chart of comparison between claim 2 of Nudelman patent in suit and Smith patent 2,207,417.

Def. Exh. 4—Copy of Theodoropulos patent 1,792,129.

Def. Exh. 5—File wrapper of Nudelman patent in suit 2,455,266.
Def. Exh. 6—Copy of patent 2,200,696.
Def. Exh. 7—Copy of patent 2,224,683.
18. Defendant's physical exhibits:
Def. Exh. 3—Cereal bowl.
Def. Exh. 3a—Model of Fig. 4 of Smith patent 2,207,417.

Clarence E. Threedy,
*Attorney for Defendant.*

Received a copy of the foregoing designation this 30th day of January, 1950.

Sidney Neuman,
Max R. Kraus,
*Attorneys for Plaintiffs.*

214 And afterwards on, to wit, the 2nd day of February, 1950 came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Additional Designation Of Record On Appeal in words and figures following, to wit:

215 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—49-C-8) * *

## PLAINTIFFS' ADDITIONAL DESIGNATION OF RECORD ON APPEAL.

To the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

Now come plaintiff by their attorney and pursuant to the Rules of Civil Procedure, hereby designate the following additional portions of the record proceedings and evidence to be contained in the Record on Appeal to-wit:

1. With respect to Item 4 of "Defendants' Designation of Record on Appeal" add

(a) the material beginning at line 21 of page 162 to and including line 4 of page 164, and

(b) lines 3 to 19 of page 195.

Sidney Neuman,
*Attorney for Plaintiffs.*

Received a copy of the foregoing additional designation this 2nd day of February, 1950.

Clarence E. Threedy,
*Attorney for Defendants.*

Nov. 30, 1948. E. NUDELMAN 2,455,266

CHILDREN'S AMUSEMENT DEVICE

Filed Feb. 17, 1948

Fig. 2.




Fig. 4.

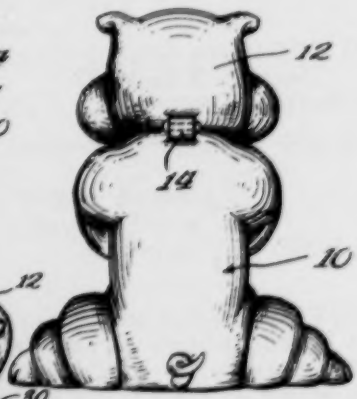






Fig. 5.

Fig. 1.







Fig. 3.

Inventor
Eloina Nudelman
By Max K Kraus
Atty

# UNITED STATES PATENT OFFICE

2,455,266

## CHILDREN'S AMUSEMENT DEVICE

Eoina Nudelman, Chicago, Ill.

Application February 17, 1945, Serial No. 8,761

3 Claims. (Cl. 46—141)

1

This invention relates to a children's amusement device, and one which will also provide a stimulant for children to eat.

It is a well established fact that children, particularly in their early years are poor eaters and parents have to provide various attractions to interest a child during feeding time.

One of the objects of this invention is to provide an amusement device, attachable to the child's feeding bowl and having means whereby the device can be fed and the food returned to the bowl.

In the drawings:

Fig. 1 is a perspective view of my amusement device.

Fig. 2 is a view showing it secured on the bowl.

Fig. 3 is a view showing the head tilted back as by a spoon, and

Fig. 4 is a rear view of the device.

Fig. 5 is a modified form of construction.

The device may be molded of plastic or stamped of any material and the preferred form of my invention may be made of two pieces, one comprising a body portion, generally indicated at 10 and the other the head portion 12, pivoted or hinged as at 14 to the body, to permit the head to be tilted back. The body portion 10 is formed to simulate a character, and in the instance shown, the body of a pig, although it will be understood that any animal or figure can be thus formed. The body is shaped to provide a concave surface 16 which engages the outside of the bowl and a forwardly projecting portion 18, which as shown forms the front legs of the pig character. The forwardly projecting portion overhangs the front of the bowl when positioned thereon and has undercut portions 20 which rest on the top of the bowl 22 and forms the hooking means by which the device is firmly secured to the bowl. The forwardly projecting part of the body is hollow as at 24 and the top 26 of the body portion upon which the head rests forms in effect the mouth into which the spoon contents are poured. The rear wall 25 encompassing the hollow body portion 24 extends slightly below the top of the bowl and into the bowl to form an apron 27 so that the food will all empty into the bowl.

The head 12 is pivotally hinged to the body portion at the rear thereof by any suitable hinge 14 to permit the head to be tilted backward as shown in Fig. 3, to expose the opening 28 and permit the contents of the spoon to be emptied into the hollow body 24 and from which it passes to the bowl 22.

2

The head can be tilted or pivoted backward by the spoon even when the spoon is full. The weight of the head will permit it to fall to a closing position when the spoon is removed, or the head can be weighted to remain in raised position until closed by tapping it with the spoon.

If desired this device can be made of one piece, as shown in Fig. 5, where the head and body are integrally formed as at 38 with the mouth portion 32 open permanently so as to receive the contents of the spoon. The device is secured to the bowl as previously described and the hollow body permits the food to pass into the bowl.

This device affords considerable interest to the young child as the mother can feed the child and the amusement device, thus providing a stimulant for the child to eat. The device can readily be attached to and detached from the bowl and can be easily cleaned.

I claim:

1. An amusement device comprising a figure formed to simulate a living creature, said figure comprising a forwardly extending portion, means adapted to attach said figure to the edge of a feeding bowl with said forwardly extending portion closely overlying a portion only of said bowl, said forwardly extending portion having a simulated mouth and a passage, said passage having walls extending solely downward from said mouth through said forwardly extending portion, whereby the contents of a spoon may be emptied into said simulated mouth and fall by gravity into said feeding bowl.

2. An amusement device comprising a figure formed to simulate a living creature, said figure comprising a body portion adapted to be placed adjacent the exterior of a feeding bowl, said body portion having a forwardly extending portion adapted to extend closely adjacent to and overlie a portion only of said bowl, said forwardly extending portion having a simulated mouth and a passage, said passage having walls extending solely downward from said mouth through said forwardly extending portion, whereby the contents of a spoon may be emptied into said simulated mouth and fall by gravity into said feeding bowl, said forwardly extending portion including means preventing lateral movement of said passage from over said bowl.

3. An amusement device comprising a figure formed to simulate a living creature, said figure comprising a body portion adapted to be placed adjacent the exterior of a feeding bowl, said body portion having a forwardly extending portion adapted to extend closely adjacent to and overlie

RK PAGE BLEEDTHRU

a portion only of said bowl, said forwardly extending portion having a simulated mouth and a passage, said passage having walls extending solely downward from said mouth through said forwardly extending portion, and a head secured adjacent said forwardly extending portion and movable to permit the contents of a spoon to be emptied into said simulated mouth and fall by gravity into said feeding bowl, said forwardly extending portion including means preventing lateral movement of said passage from over said bowl.

EOINA NUDELMAN.




REFERENCES CITED

The following references are of record in the file of this patent:

UNITED STATES PATENTS

| Number | Name | Date |
|---|---|---|
| 236,831 | Bowen | Apr. 27, 1880 |
| 356,168 | Shea | Jan. 18, 1887 |
| 843,934 | Livingston | Feb. 5, 1907 |
| 1,751,773 | Trosper | Mar. 25, 1930 |

136

J. H. BOWEN.

Toy Money-Box.

No. 226,831. Patented April 27, 1880.

Fig. 1.

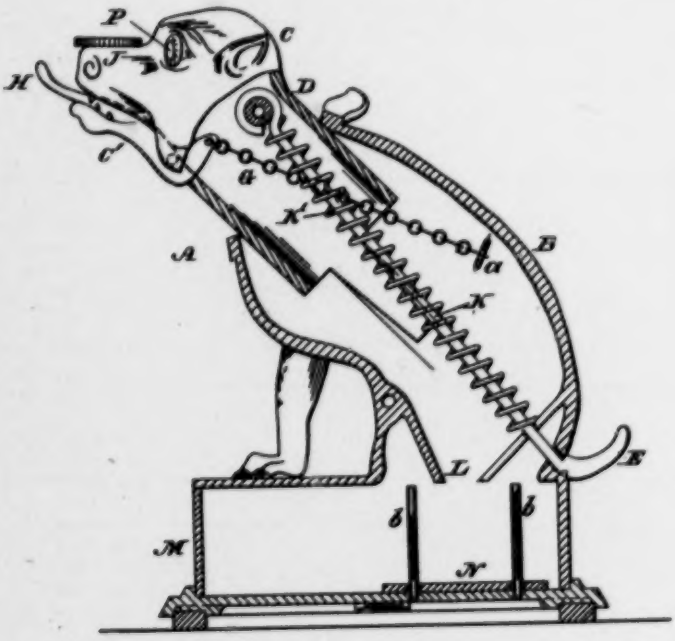
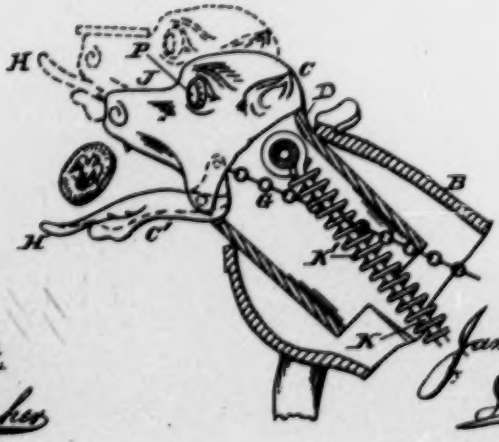



Fig. 2.




Witnesses:

E. A. Burtt

H. C. Fischer

Inventor:

James H. Bowen,

John A. Lindenbaum

ATTORNEY.

# UNITED STATES PATENT OFFICE.

JAMES H. BOWEN, OF PHILADELPHIA, PENNSYLVANIA.

## TOY MONEY-BOX.

SPECIFICATION forming part of Letters Patent No. 226,881, dated April 27, 1880.

Application filed February 14, 1880.

*To all whom it may concern:*

Be it known that I, JAMES H. BOWEN, a citizen of the United States, and a resident of the city and county of Philadelphia, and State of Pennsylvania, have invented a new and useful Improvement in Toy Money-Boxes; and I do hereby declare the following to be a specification thereof, reference being had to the accompanying drawings, in which—

Figure 1 is a partial side elevation and vertical section of the toy money-box embodying my invention. Fig. 2 is a view of a portion thereof, some of the parts being in different position.

Similar letters of reference indicate corresponding parts in the two figures.

My invention consists of a toy money-box of the figure of a dog or other animal or being having a movable head and an opening mouth, all so disposed that when a quick rearward motion is imparted to the head the mouth opens and the coin, previously placed on the head of the figure, leaves its seat by inertia, and is caught by the mouth and thus directed into the body of the figure.

Referring to the drawings, A represents the figure of an animal—in the present case of a dog—consisting of a hollow body, B, a sliding head, C, whose neck D, properly guided within the body, is adapted to move in and out of the same, and a movable tail, E, for imparting the inward or rear motion to the head, the parts being preferably cast metal.

The animal has a movable mouth formed by hinging the lower jaw, C′, to the head, and to the rear of said jaw is attached one end of a chain or rod, G, whose other end is connected to the body of the figure, as at *a*, for holding the mouth in a closed position.

H represents the tongue of the animal, which is represented as extended, and projects beyond the nostrils, and J represents a horizontal ledge, flat portion, or seat on the head over the nostrils.

Attached to the inner end of the tail E is a rod, K, which is guided in proper walls of the body B and connected to the head C. A spring, K′, encircles the rod, and has its upper end connected to the upper end of said rod, and the lower end bearing against the body B.

The body B is supported on a box, M, which constitutes the base of the device and forms the receptacle for the coin or money, and communication is had between the body A and box M by means of a chute, L, at the lower end of the body. Rising from the box M are pins *b b*, on which is loosely fitted a plate, N, which is so disposed that when the device is overturned said plate shifts from the bottom of the box and slides against the walls of the chute L, which is thereby closed, as a trap, and prevents abstraction or escape of the money.

The operation is as follows: A coin is placed on the ledge J, and the tail E is drawn rapidly out or rearward, whereby, owing to the rod K, a quick motion is imparted to the head. The jaw C′, if connected to a chain, G, is no longer controlled thereby, and falls by gravity; but if connected to a rod the latter imparts a positive motion to the jaw, so that in either case the mouth opens. Owing to the impulse of the head, the loosely-supported coin loses its seat on the ledge J and falls, and is caught on the tongue H. The tail is let go, and the parts immediately assume their normal positions, the chain or rod G closing the jaw or mouth, and the coin then falls through the throat of the animal into the body B, and is directed by the chute L to the box M.

It will be seen that the action of the animal is apparently that of snapping at the coin and then swallowing it, thus presenting an amusing toy.

P represents glass eyes, which may be cemented to or embedded in the metal head C, and serve to add to the life-like appearance of the animal.

Having thus described my invention, what I claim as new, and desire to secure by Letters Patent, is—

1. A toy money-box consisting of a body, in the form of a dog or other animal or being, having a head adapted to move and a mouth adapted to be opened, substantially as described, whereby when the head is moved quickly back the mouth opens and the coin,

previously placed on the head, leaves its seat by inertia, and is caught by the mouth of the figure and directed into the body of the same, substantially as specified.

2. The body B, movable head C, coin-catching mouth C′, tail E, rod K, spring K′, and connection G, combined and operating substantially as and for the purpose set forth.

3. The coin-receiving body B and chute L and the base M, in combination with the trap consisting of the sliding plate N, fitted on the pins *b*, and operating as and for the purpose set forth.

J. H. BOWEN.

Witnesses:
JOHN A. WIEDERSHEIM,
W. F. KIRCHER.

(No Model.)

# T. R. SHEA.

## CIGAR TIP CLIPPER.

No. 356,168. Patented Jan. 18, 1887.

Fig. 1.



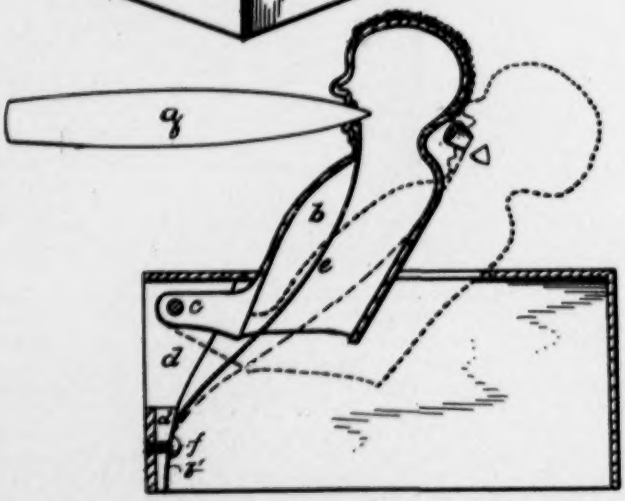




Fig. 2.

WITNESSES:
A. F. H. Pillsbury.
Allen Webster

INVENTOR
Timothy R. Shea

# UNITED STATES PATENT OFFICE.

TIMOTHY R. SHEA, OF SPRINGFIELD, MASSACHUSETTS.

## CIGAR-TIP CLIPPER.

SPECIFICATION forming part of Letters Patent No. 356,168, dated January 18, 1887.

Application filed June 28, 1886. Serial No. 206,531. (No model.)

*To all whom it may concern:*

Be it known that I, TIMOTHY R. SHEA, a citizen of the United States, residing in Springfield, in the county of Hampden and State of Massachusetts, have invented new and useful Improvements in Cigar-Tip Clippers, of which the following is a specification, reference being had to the accompanying drawings, and letters of reference marked thereon.

I am well aware that cigar-tip clippers or cutters have been heretofore made wherein the clipping-blade was caused to operate when the cigar end is forced in the cigar-receiving opening and the plate having the opening is forced downward. My device differs from this in that a figure is provided which, being pivotally arranged in a base, operates when the cigar end is forced into the mouth of the figure to move backward, and thus cause the cutting-knife to be projected across the cigar-opening and the cigar end to be cut off. My device differs also from the kind heretofore made in the detail of construction, arrangement, and operation, as hereinafter specifically pointed out.

The object of my invention is to make an ornamental, cheaply and simply constructed, and convenient easily operative device; and to that end my invention consists in the construction and arrangement as herein set forth, whereby the beneficial objects of my invention are attained.

In the accompanying drawings, in which like letters of reference indicate like parts, Figure 1 is a perspective view of my complete device, and Fig. 2 is a side elevation of the same in section.

Referring to the drawings in detail, *a* indicates a base or frame; *b*, a figure having a pivotal lug, *c*, which is pivoted to lugs or parts *d*.

*e* indicates a spring having a knife or cutting edge at its upper or free end, and is secured by a screw to the boss *b'*.

*g* indicates a cigar in position before the device is operated to clip or cut the tip from the cigar.

The portion of the figure representing the mouth is provided with an opening, as shown, of sufficient size to receive the cigar-tip, and the cutting-edge is adapted to cover this opening and slide close to it when the figure is thrust backward.

To use the device it simply becomes necessary to place the end of the cigar in the dicated in dotted lines in Fig. 2, when the blade will be forced across the opening and the end of the cigar will be cut off and fall through the figure to the case *a* or to any receptacle provided to receive the cigar ends.

The elevated arms enable me to hang a lamp or support a cigar-lighting torch thereon.

Other forms or figures may of course be used, if desired, and the cutting-blade may be secured in other equivalent ways than that shown.

The spring *e* returns the figure to its normal position when pressure is removed.

I am aware that cigar-tip cutters have heretofore been made consisting of a storage-box having a pivoted lid provided with gage-holes, and having a spring-blade which operates to open the cover and cut the cigar-tip, and I make no claim to such construction. With such device the user must hold the cigar nearly perpendicular while cutting the tip, while with my device the cigar is held nearly horizontal, and my figure, which is pivoted to stand while in its normal position more perpendicularly, is by the act of cutting forced backward to stand at an angle. The figure used by me does not act as a cover to the box, but is pivoted to the box and projects through an opening in the cover.

Having therefore described my invention, what I claim, and desire to secure by Letters Patent, is—

1. A figure, *b*, having an opening to receive a cigar-tip, in combination with a box-base, *a*, having an opening to allow the figure to project therefrom, the figure being pivoted within the box-base, and a cutting spring-blade, *e*, fixed to the base at one end and projecting across the cigar-tip opening at its opposite end, substantially as shown.

2. A base, *a*, having lugs *d*, in combination with a figure-piece, *b*, having tongue *c*, pivoted within said base to said lugs and projecting therefrom, and a spring cutting-blade, *e*, arranged to project upward into the figure and cut across the cigar-receiving opening, substantially as shown.

3. A cigar-tip clipper consisting of a base, *a*, having a figure, *b*, pivoted thereon, said figure having its arms raised to support a cigar-lighting torch, and the spring-cutter *e*, substantially as shown.

Witnesses: TIMOTHY R. SHEA.

ALLEN WEBSTER.

144

(No Model.)

# R. MacMORRIS.

## DETACHABLE MUSTACHE SHIELD OR GUARD FOR CUPS.

No. 516,354. Patented Mar. 13, 1894.

FIG: 1

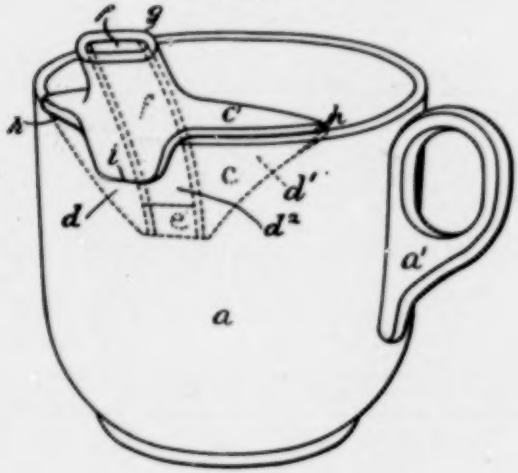



FIG: 2

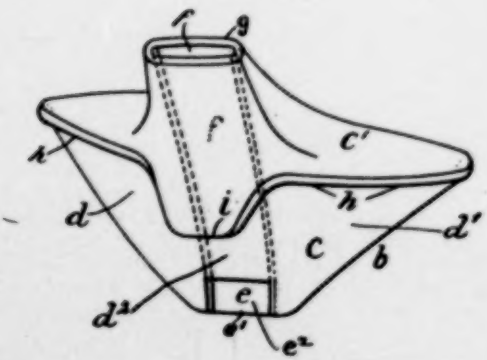
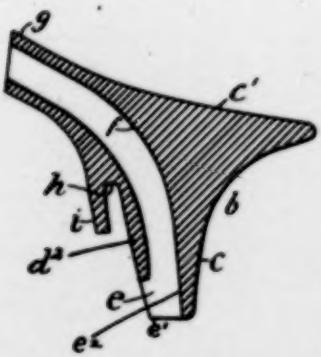



FIG: 3




WITNESSES:
W. Jackson.
W. A. Schaefer.

INVENTOR:
Robert MacMorris.
BY J. Walter Douglass.
ATT'Y

# UNITED STATES PATENT OFFICE.

ROBERT MACMORRIS, OF PHILADELPHIA, PENNSYLVANIA.

## DETACHABLE MUSTACHE SHIELD OR GUARD FOR CUPS.

SPECIFICATION forming part of Letters Patent No. 516,854, dated March 13, 1894.

Application filed March 6, 1893. Serial No. 464,728. (No model.)

*To all whom it may concern:*

Be it known that I, ROBERT MACMORRIS, a citizen of the United States, residing at the city of Philadelphia, in the county of Philadelphia and State of Pennsylvania, have invented certain new and useful Improvements in Detachable Mustache Shields or Guards for Cups, of which the following is a specification.

My invention relates to a detachable shield or guard for application to cups for protecting the mustache in the imbibing of fluids or liquids therefrom.

The principal objects of my invention are first, to provide a simple, inexpensive and efficient detachable guard or shield for ready application to different styles of cups for protecting the mustache in the imbibing of a liquid or fluid therethrough; and second, to provide a detachable guard or shield for cups for protecting the mustache and permitting of a regulated discharge of the fluid or liquid from the cup into the mouth without the same contacting with the mustache.

My invention consists of the improvements in detachable shields or guards for cups hereinafter described and claimed.

The nature and general features of my invention will be more fully understood from the following description taken in connection with the accompanying drawings forming part hereof, and in which—

Figure 1, is a perspective view of a cup with a detachable shield or guard embodying the general features of my invention shown in application thereto. Fig. 2, is a similar view of a detachable device removed from the cup; and Fig. 3, is a vertical central section through the device of Fig. 2.

Referring to the drawings *a*, is a cup of any suitable shape or form provided with an ordinary handle *a'*.

*b*, is the detachable shield or guard having a truncated or similar shaped body *c*, and having the front portion of the body convexly curved at *d* and *d'*, and at the middle of the front portion of the body *c*, as at $d^2$, the same is arranged so as to fit snugly up against the inner surface of the cup *a*, for purposes to be presently fully explained.

In an inlet located near the bottom of the body *c*, and arranged as that in the application of the shield or guard to the cup *a*, the face of the inlet *e*, will occupy a position flush with the internal wall of the cup and in such position a narrow space *e'*, will be provided at the base portion of the device between the internal surface of the cup and the internal surface $e^2$, of the shield or guard through which space the fluid of the cup is lifted by suction through the body *c*, of the device to be presently more fully explained. This outlet *e*, merges with a curved conduit *f*, provided with a flaring teat or spout *g*, for discharging in regulated quantity the fluid contents of the cup *a*, into the mouth. The conduit *f*, by reason of the curved construction thereof as clearly shown in Fig. 3, is in fact an air channel, which when the device is in use with the cup containing its full quota of fluid permits of the requisite normal suction being obtained and maintained to cause an efficient lifting of the fluid through the narrow slit or opening *e'*, in the base of the device. Moreover, the flow of the fluid is at all times while the shield or guard is in use under due regulation, so that at no time can the mouth be flooded through the lifting by suction of the contents of the cup, which would occur if a strainer was employed in the base portion of the device, because of the area of open space which such would present and thereby interfering with the lifting by suction and at the same time requiring abnormal suction and as a consequence flooding of the mouth with the fluid of the cup *a*. The upper or face portion *c'*, of the body *c*, is provided with an overhanging flange *h*, forming a channeled seat for engaging the device with the edge or rim of the cup *a*, and provided with an integral depending lip or tongue *i*, for engaging the exterior surface of the cup and supporting the device in position in connection therewith.

The hereinabove described detachable device having been caused to assume the position in connection with the cup as illustrated in Fig. 1, with the first and second fingers resting on the face *c'*, of the body *c*, and with the thumb and other fingers embracing the cup, the contents of the cup in regulated quantity may be readily withdrawn there-

into the mouth, without the mustache being soiled or in fact coming in contact with the fluid or liquid of the cup withdrawn therefrom.

Having thus described the nature and objects of my invention, what I claim as new, and desire to secure by Letters Patent, is—

The detachable mustache shield or guard for drinking cups or vessels, comprising an imperforate truncated body *c*, having a convexly curved front at *d* and *d'*, with the middle portion $d^3$, adapted to snugly engage the wall of a drinking vessel, an inlet *e* located near the bottom of the device and adapted to occupy a position flush with the internal wall of the vessel so as to leave a narrow space *e'*, at the base and between the internal wall of the cup or vessel and surface of the device and through which narrow space *e'*, the liquid is adapted to be lifted by suction in regulated volume or prescribed quantity through the curved conduit *f*, extending the length of the device and having at the extremity thereof a flaring teat *g*, the upper portion *c'*, of said body *c*, of the device being provided with an overhanging flange *h*, which is recessed so as to be adapted to seat with the top edge of the vessel and provided with a depending lip *i*, adapted to maintain the device in required position with respect to the vessel, all arranged as shown and for the purposes described.

In testimony whereof I have hereunto set my signature in the presence of two subscribing witnesses.

ROBT. MACMORRIS.

Witnesses:
THOMAS M. SMITH,
RICHARD C. MAXWELL.

No. 843,024. PATENTED FEB. 5, 1907.

# T. J. LIVINGSTON.

## FIGURE TOY.

APPLICATION FILED NOV. 20, 1906.

Fig. 1.

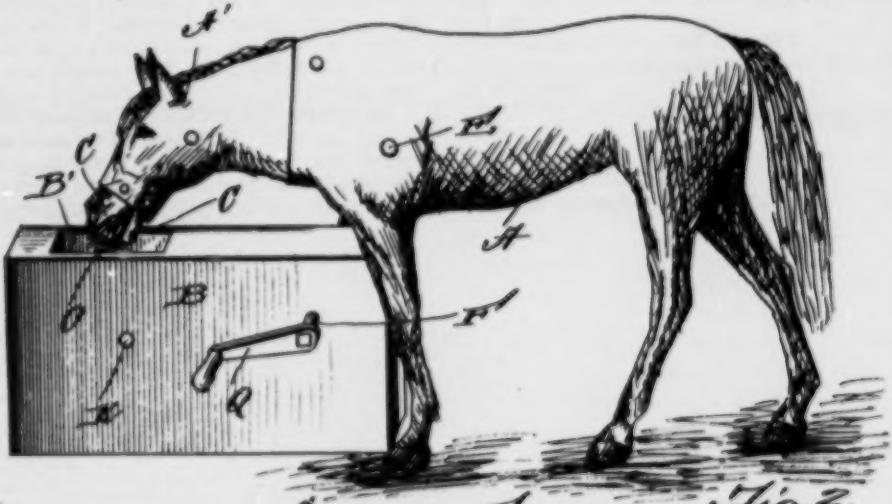
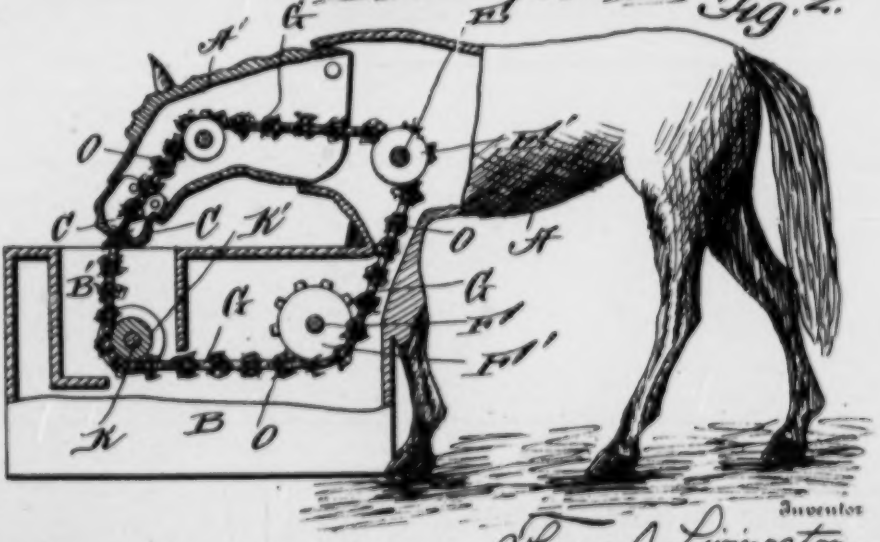



Fig. 2.




Witnesses

R. A. Brown.

L. A. Sherman

Inventor

Thomas J. Livingston,

By Franklin H. Hough

Attorney

# UNITED STATES PATENT OFFICE.

THOMAS JOHN LIVINGSTON, OF FITZGERALD, GEORGIA.

## FIGURE TOY.

No. 843,024. Specification of Letters Patent. Patented Feb. 5, 1907.

Application filed November 20, 1906. Serial No. 344,289.

*To all whom it may concern:*

Be it known that I, THOMAS JOHN LIVINGSTON, a citizen of the United States, residing at Fitzgerald, in the county of Irwin and State of Georgia, have invented a certain new and useful Improvement in Figure Toy; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same, reference being had to the accompanying drawings, and to the letters and figures of reference marked thereon, which form a part of this specification.

This invention relates to new and useful improvements in figured toys; and the object of the invention is to produce a simple and efficient device of this nature consisting of a continuously-feeding apparatus comprising an endless carrier to which bunches indicating food are attached and adapted to be carried into the mouth of the animal, the lips and head of the figure being pivotally mounted in order to give the appearance of the natural movements of the lips and head while eating.

The invention comprises various other details of construction and combinations and arrangements of parts, which will be hereinafter fully described and then specifically defined in the appended claim.

I illustrate my invention in the accompanying drawings, in which—

Figure 1 is a perspective view of the animal, showing the feeding trough or stall out of which the food passes into the mouth of the animal; and Fig. 2 is a vertical sectional view through the animal and the feed-stall.

Reference now being had to the details of the drawings by letter, A designates the body of an animal, which in the drawings is made to represent that of a horse, although it will be understood that the apparatus may be applied to any kind of an animal.

B is a feed-stall having an opening B′, through which the feed passes from the feed stall or box into the mouth of the animal.

The head A′ of the animal is pivotally mounted in order to have a swinging movement, and also the lips C are pivoted and adapted to be moved by the bunches of food which enter the mouth and serve to give a life-like movement to the parts.

Fixed to a shaft E, journaled in the side walls of the body of the animal, is a drum E′, and F is a shaft journaled in suitable bearings in said feed stall or box.

F′ is a sprocket-wheel fixed to said shaft F, and G is an endless band having perforations therein adapted to engage the teeth of said sprocket-wheel, and K designates a shaft also mounted in the side walls of the feed stall or box and to which a drum K′ is fixed. Said band G has bunches of artificial food O secured thereto its entire length and passes through between the lips of the animal and over the drum and thence down through an opening in the bottom of the body and into the rear end of the box, thereby concealing the exit movement of the food back into the box, the bunches of food only being visible as they pass into the mouth of the animal and, coming in contact with the pivotal lips, cause the same to tilt and also the head, thereby giving a natural life-like appearance to the animal as though eating. A crank or handle Q is fastened to the shaft F, whereby the latter may be rotated and the band made to travel.

While I have described the device as operated by means of a hand-crank, it will at once be evident that clockwork mechanism or any other suitable source of power may be substituted therefor.

What I claim is—

A figure toy consisting of a body portion of an animal, a pivotal head thereon, pivotal lips upon said head, a drum mounted therein, a feed-box having an opening in its top, a shaft mounted in the side walls of the box, a sprocket-wheel fixed to said shaft, a drum also mounted between the walls of the box, an endless band passing over said drums and sprocket-wheel, and bunches representing artificial food fastened to the band and adapted to move said pivotal lips of the animal as they pass into the mouth of the latter, as set forth.

In testimony whereof I hereunto affix my signature in the presence of two witnesses.

THOMAS JOHN LIVINGSTON.

Witnesses:
J. L. GOOGE,
J. W. RODWELL.

March 25, 1930. B. B. TROSPER 1,751,773

TOY FIGURE

Filed April 12, 1928

Fig. 8.




Fig. 1.




Fig. 2.

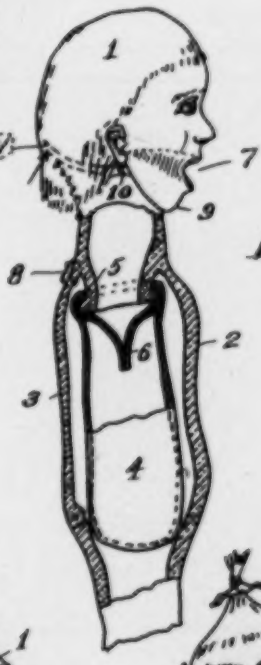



Fig. 3.




Fig. 5.




Fig. 7.




Fig. 4.




Fig. 6.




INVENTOR

Bal Bill Trosper.

BY

H. M. Plaistead.

ATTORNEY.

Patented Mar. 25, 1930

1,751,773

153

# UNITED STATES PATENT OFFICE

BAB BELL TROSPER, OF NEAR MONROE CITY, MISSOURI

## TOY FIGURE

Application filed April 18, 1928. Serial No. 269,343.

This invention relates to certain new and useful improvements in dolls and like figures of animals, birds, etc., the peculiarities of which will hereinafter be fully described and claimed.

The main object of my invention is to adapt such a toy figure to open its mouth by manipulation to receive and retain food in an inner chamber adapted for emptying, whereby a child may simulate feeding her doll or other figure; secondly, to effect such action of the figure by manipulation of the ears as operating levers; thirdly, to simulate sticking out the tongue at the same time the mouth is opened; and fourthly, to provide flexible cheeks in said figure.

Many dolls are adapted to open the mouth, but the construction is often such that the action is a travesty on nature and repugnant to a child. In figures representing animals with deeply slit jaws and birds with long bills, the appearance is more similar to natural action and I provide an interior chamber with a valve adapted to admit food as fed to the figure by the child and retain such contents till it is necessary to empty the chamber, thus furnishing amusing occupation for the little one. Also, simultaneous action of projecting the tongue when the mouth is opened adds to the natural appearance and is so recognized by the child; and manipulation of the ears to effect said action promotes the amusement of the child operator.

In the accompanying drawing in which like reference numerals indicate corresponding parts,

Fig. 1 represents a side view of a doll with my improvements applied thereto;

Fig. 2, a partial vertical section of Fig. 1;

Fig. 3, the head of such a doll with bulging cheeks;

Fig. 4, a horizontal section through the mouth of Fig. 3 and plan view of operating mechanism;

Fig. 5, a head similar to Fig. 3 showing the mouth open and tongue projecting;

Fig. 6, a sectional plan view similar to Fig. 4 showing the mechanism in position for producing the appearance of Fig. 5;

Fig. 7, a figure representing a bird such as a cormorant exemplifying my invention; and

Fig. 8, a portion of a figure representing a dog adapted to illustrate my invention.

Referring to the drawing, the numeral 1 designates the head of a doll having a hollow body 2 and a hinged lid 3 for an opening in the back or elsewhere to allow the removal of a sac 4 of rubber or other suitable material adapted to be detachably secured to a neck extension 5, and having a self-closing flap or other check valve 6 guarding the top of the sac to avoid accidental discharge of food delivered thereto through the open mouth 7 by the child operator. With suitable check valve for this sac or other interior chamber, water, milk and other liquids are retained in said sac till the sac is removed through said opening in the back for emptying. The lid is held closed by a button 8 or otherwise.

The doll may be of porcelain clay, papier mâché, or other material, but the sides of the face forming the cheeks are made of flexible and/or elastic sheet material to allow of depressing the jaw 9 on its pivot 10 by a loop lever 11 fixed to the jaw and extending back of the neck where it is practically concealed by the usual hair. By pressing upward on the lever as indicated by the arrow Fig. 2, the mouth is opened as indicated by this figure for admission of food to the interior sac. A spring 12 may be used to assist in keeping the jaw raised to normal closed position. Figs. 3–6 also have a pivoted jaw, and preferably have an interior sac with check valve as shown in Fig. 2.

In Fig. 4 the flexible cheeks of the figure are bulged outward by the arms of the suitably shaped spring 13 secured at its middle to the back of the mouth and its free arms bent to the desired contour of the cheeks as bulged outward, and having a lateral spring tendency outward, which thus act to distend the cheeks and stretch the lips horizontally with the chin raised accordingly as indicated in Figs. 3 and 4.

Each arm of said spring has an outward projection 14 rigidly or otherwise connected to the spring, and passing through adjacent openings back of the ears and are preferably

pivoted by their ends to the ears themselves. The ears are pivoted at 15 or otherwise movable, so that the outward tendency of the spring arms tends to make the ears stand outward from the head as shown in Fig. 4. Pressure on the ears by finger and thumb as indicated in Fig. 6, will cause them to lie close to the head and act as levers on said spring projections 14 to force them inward, compress the spring arms 13 and allow the jaw to drop and be automatically depressed by a weaker spring 16 mounted on the rigid neck and so collapse the cheeks, distended in Figs. 3 and 4, and open the mouth as shown in Fig. 5 similar to Fig. 2.

The coil spring 16 has one arm bearing down on the jaw under the tongue and another arm that is fixed in the throat. The lateral spring tendency of the spring arms 13 distends the flexible cheeks (Fig. 3) and raises the jaw by overcoming gravity and the downward pressure of the weaker spring 16. The latter spring simply adds to the gravitating tendency of the jaw when the spring arms 13 are compressed and release the outward pressure on the cheeks, as shown in Fig. 6.

In order to project the tongue 17 simultaneously with the opening of the mouth by depressing the jaw, the tongue is mounted on an inner spring 18 secured to the inner side of the spring 13 and forming with the middle back portion of said spring 13 or otherwise, a circular loop in normal position that becomes elliptical when laterally compressed and carries the tongue outward as shown in Fig. 6. Since the back end of the spring is fixed at the back of the mouth, compression to an elongated or elliptical form (Fig. 6) causes the front end carrying the tongue to move forward and protrude the tongue simultaneously with the depression of the jaw by the weaker spring 16, and consequent opening of the mouth. When the ear levers are released both parts of this compound spring tend to assume their circular position, and the tongue is retracted and the cheeks are distended again. (Fig. 4.) Protection of the tongue alternates with bulging of the cheeks.

The lower bill of the cormorant Fig. 7 is depressed by manipulating a backward loop 19 (similar to 11 in Figs. 1 and 2) against the normal tendency of a spring 20 to raise the bill.

The pivotal ears of the dog Fig. 8, have links 21 connecting rearward extensions 22 of the jaw with the ear levers. By passing the hand of the operator over the ears and depressing them—as if smoothing the head,—the ears will lie down and the mouth will open.

In all the toy figures, the jaw is pivoted at 10. Closing the mouth is effected by the elastic cheeks in Figs. 1 to 6, assisted by coil spring 12 in Figs. 1–2 that pulls down on the lever 11 fixed to the jaw; or by the flat spring 20 in Fig. 7 that pushes down on the corresponding lever 19. In Fig. 8, the flat spring 12 pushes up on the dog's jaw to close it after the ear levers have opened it as shown.

The pivoted lower jaw is depressed and the mouth opened by manipulating the loop lever upward in Fig. 2; by manipulating the pivoted lever ears backward as indicated in Fig. 6; and by manipulating the pivoted lever ears downward in Fig. 8: thus providing manually actuated levers in each case for opening the mouth of the toy figure when the child operator desires.

An interiorly disposed sac as in Fig. 2 is provided for cormorant and dog, (Figs. 7 and 8) respectively.

Other manually operated means than those illustrated may be used without departing from the spirit of my invention.

I claim:

1. A toy figure of the character described comprising a jaw manually operable to form an open mouth, and a body having walls forming an interior chamber adapted to receive its contents through the mouth, and provided with a check valve having self-closing flaps opening inward and preventing discharge of the contents through the mouth.

2. A toy figure of the character described comprising a jaw manually operable to form an open mouth, a hollow body, and an interiorly disposed sac detachably connected to the mouth and removable with its contents through an opening in said body.

3. A toy figure of the character described comprising a jaw manually operable to form an open mouth, a hollow body, and an interiorly disposed sac connected to the mouth and provided with a check valve, substantially as described.

4. A toy figure of the character described comprising a pivoted jaw with flexible cheeks, spring means located inside said jaw adapted to bulge said cheeks, and movable ears operatively connected to said spring means, substantially as described.

5. A toy figure of the character described comprising a pivoted jaw, means to depress the jaw to open the mouth, a circular spring located within said jaw, a tongue mounted on said spring, and means to compress said spring laterally simultaneously with the opening of the mouth.

6. A toy figure of the character described comprising a pivoted jaw, means to depress the jaw to open the mouth, a circular spring disposed within said jaw and secured in the rear, a tongue mounted on the front of said spring, and pivoted ears operatively connected to the sides of said spring adapted to compress it laterally to elliptical shape and project the tongue, substantially as described.

7. A toy figure of the character described comprising a pivoted jaw, means to depress said jaw, a circular spring disposed within

said jaw and having outward projections through openings back of the ears, and a tongue mounted on said spring adapted to be projected when the jaw is depressed, substantially as described.

8. A toy figure of the character described comprising a pivoted jaw with flexible cheeks, a compound spring fastened at the rear within said jaw and having arms with free ends and lateral tendency and a circular portion between said arms, a tongue mounted on said circular portion, and pivoted ears operatively connected to said spring, substantially as and for the purpose described.

In testimony whereof I have affixed my signature.

BAB BELL TROSPER.

158

Feb. 10, 1931. A. A. THEODOROPULOS 1,792,129

COMBINED UMBRELLA HOLDER AND PURSE

Filed Nov. 2, 1929



FIG. 1



FIG. 3

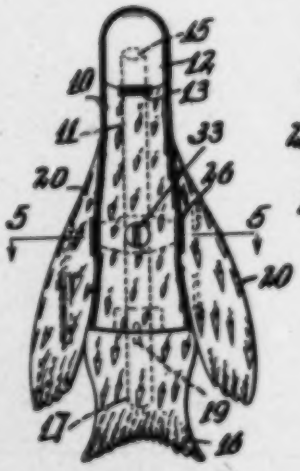


FIG. 2

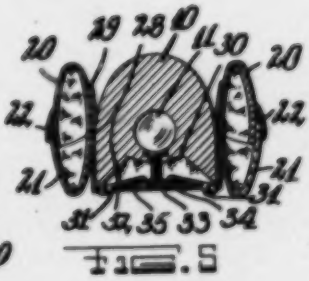


FIG. 5



FIG. 4



FIG. 6

INVENTOR
Aristede A. Theodoropulos
BY
ATTORNEY

Patented Feb. 10, 1931

1,792,129

159

# UNITED STATES PATENT OFFICE

ARISTEDE A. THEODOROPULOS, OF NEW YORK, N. Y.

## COMBINED UMBRELLA HOLDER AND PURSE

Application filed November 3, 1930. Serial No. 494,982.

This invention relates to new and useful improvements in casings for holding umbrellas.

The invention has for an object the provision of a device of the class mentioned which is of simple durable construction, dependable in use and efficient in action, and which may be manufactured and sold at a reasonable cost.

The invention proposes an umbrella casing simulating a bird, preferably an eagle, and having a hollow body, a head hinged upon the body arranged for being latched in ordinary condition and to hinge for permitting the insertion of an umbrella within the hollow, a tail detachably mounted upon the body and also permitting the insertion of an umbrella within the hollow, the wings constituting pocket books. Articles such as powder case, a lipstick holder, a handkerchief, etc., may be carried in the pocket books. A means may be provided for fixing the wings in various spread positions.

For further comprehension of the invention, and of the objects and advantages thereof, reference will be had to the following description and accompanying drawings, and to the appended claims in which the various novel features of the invention are more particularly set forth.

In the accompanying drawing forming a material part of this disclosure:—

Fig. 1 is a side elevational view of a device constructed according to this invention.

Fig. 2 is a rear elevational view of Fig. 1.

Fig. 3 is a view similar to Fig. 1 but showing the head moved to an open position.

Fig. 4 is a vertical sectional view of the tail, per se.

Fig. 5 is a horizontal sectional view taken on the lines 5—5 of Fig. 2.

Fig. 6 is a view similar to Fig. 5 but showing the wings in spread positions.

The reference numeral 10 indicates generally a body having a bore 11 and of eagle shape and design. A head 12 is hinged to the body at 13 and is provided with a latch 14 arranged for latching the head in a natural position on the body. The head is provided with a hollow 15 communicating with the hollow of the body. A tail 16 is detachably mounted upon the bottom of the body.

The tail 16 is provided with a bore 17 aligning with the bore of the body 10 and is provided with a reduced top end 18 arranged for engaging in a recess in the body for firmly maintaining its position. A latch 19 serves to lock the tail upon the body. Wings 20 on opposite sides of the body 10 are arranged to constitute pocket books.

The pocket book construction is of any customary design preferably having a flap 21 arranged to be latched in a closed position by a latch 22. Various articles are shown stored within the pocket book such as a powder case 23, a handkerchief 24, a comb 25, etc. The wings are hingedly connected at their top edges on the body as at 26. Fringes 27 attached upon the body 10 simulate the feet of the bird.

A bell crank 28 is pivotally mounted upon each of the hinges serving to hold the wings 20. One of the arms of each hinge is attached upon the rear face of the wing, this arm being indicated on the drawing by reference numeral 29. The other arm 31 extends within a hollow 30 formed in the body and is provided with a slot 32. A screw 33 is rotatively mounted in the body 10 and a shuttle 34 threadedly engages upon the screw and is disposed within the hollow 30. The head of the screw is accessible from the exterior so as to be manually operable for causing the shuttle 34 to move along its length. Each of the ends of the shuttle is provided with a pin 35 engaging in the slots 32 in the arms 31. When the screw is turned for moving the shuttle, this motion is communicated for moving the wings to a different spread position.

In operation of the device an umbrella of collapsible construction, as disclosed in my copending application, Serial No. 276,206 filed May 9, 1928, Patent No. 1,738,267 of Dec. 3, 1929 for collapsible umbrella, may be inserted within the hollow body by either moving the head 12 to a position illustrated in Fig. 3 or by disengaging the latch 19 and removing the tail. Various articles may be held in the pocket books and these pocket books may be positioned in various angular

160

conditions for convenience in holding articles and for simulating different spread conditions of the wings of the bird.

While I have shown and described the preferred embodiment of my invention, it is to be understood that I do not limit myself to the precise construction herein disclosed and the right is reserved to all changes and modifications coming within the scope of the invention as defined in the appended claims.

Having thus described my invention, what I claim as new, and desire to secure by United States Letters Patent is:—

1. In a device of the class described, a body, pocket books hinged thereon, bell cranks hinged on the body and having one of their arms respectively attached to the pocket books, and a means for holding the bell cranks in fixed positions.

2. In a device of the class described, a body, hinges mounted on the sides of the body and having adjacent inner ends extending into a hollow in the body, and outer ends supporting pocket books, and means for holding the corresponding inner ends of the hinges at spaced distances away from the body.

3. In a device of the class described, a body, hinges mounted on the sides of the body and having adjacent inner ends extending into a hollow in the body, and outer ends supporting pocket books, and means for holding the corresponding inner ends of the hinges at spaced distances away from the body, said means including elongated slots formed in the adjacent inner ends of said hinges, and adjustable means attached between the slots for changing the positions of the inner hinge portions.

4. In a device of the class described, a body, hinges mounted on the sides of the body and having adjacent inner ends extending into a hollow in the body, and outer ends supporting pocket books, and means for holding the corresponding inner ends of the hinges at spaced distances away from the body, said means including elongated slots formed in the adjacent inner ends of said hinges, and adjustable means attached between the slots for changing the positions of the inner hinge portions, comprising a shuttle slidably engaging said slots, and a manipulating screw rotatively mounted on the body and threadedly engaging said shuttle.

In testimony whereof I have affixed my signature.

ARISTEDE A. THEODOROPULOS.

Aug. 22, 1939. E. P. SMITH 2,170,311

BOWL

Filed March 14, 1938

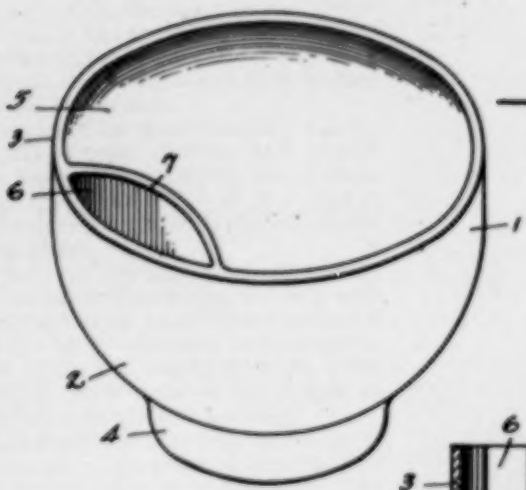



Fig. 1.

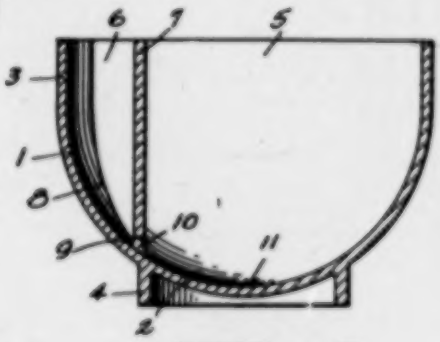



Fig. 3.

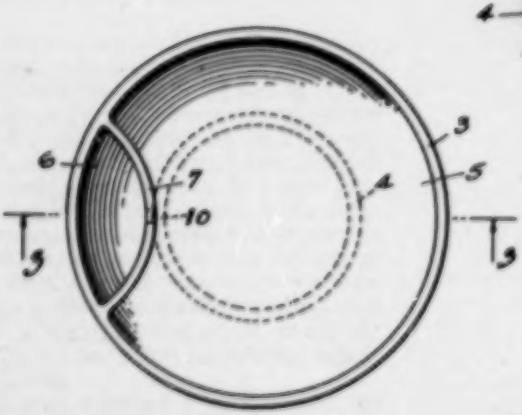



Fig. 2.

INVENTOR.
EDITH PHILLIPS SMITH.
BY Pclapp & Cle.
ATTORNEYS.

# UNITED STATES PATENT OFFICE

2,170,311

## BOWL

Edith Phillips Smith, Berkeley, Calif.

Application March 14, 1938, Serial No. 195,739

1 Claim. (Cl. 65—15)

The present invention relates to improvements in breakfast bowls and its principal object is to provide a breakfast bowl which permits cream to be introduced into breakfast foods without destroying their crispness, a characteristic which makes certain kinds of breakfast foods particularly appetizing.

At present it is the custom to serve certain breakfast foods in conventional bowls and to pour the cream or other liquid to be used on top of the breakfast food so that the cream trickles through the food, which causes the latter to absorb the cream and to become soggy.

In the present invention it is proposed to provide a bowl which is arranged in such a manner that the cream may be directly delivered to the bottom of the bowl without trickling through the breakfast food so that the latter retains its crispness. The user may dip his spoon down to the level of the cream and in lifting it will remove a spoon partly filled with cream and with a layer of dry and crisp breakfast food on top of the cream.

Further and other objects and advantages of my invention will appear as the specification proceeds.

The preferred form of my invention is illustrated in the accompanying drawing in which

Figure 1 shows a perspective view of my breakfast bowl,

Figure 2 a top plan view of the same, and

Figure 3 a vertical section taken along line 3—3 of Figure 2.

While I have shown only the preferred form of my invention I wish to have it understood that various changes or modifications may be made within the scope of the claim hereto attached without departing from the spirit of the invention.

In its preferred form my bowl 1 has a rounded, concave bottom 2 which may be semi-spherical in form and has a rim 3 rising therefrom which latter is preferably cylindrical.

It should be understood that this form of bowl is more or less conventional and other forms may be substituted as long as they lend themselves to the application of the special features about to be described.

A cylindrical base 4 may be used to normally hold the bowl in upright position.

The bowl is divided into a major section 5 and a minor section 6 by means of a partition 7. The latter rises vertically from the ascending bottom of the bowl in the proximity of a portion of the rim of the bowl so as to separate the section or pocket 6 from the main body portion of the bowl.

In horizontal section the partition is reversely concave to that portion of the rim with which it cooperates in forming the pocket and the partition rises from the bottom at a point well spaced from the center of the bowl, as shown in the drawing.

Since the partition is vertical and the cooperating wall section of the bowl is curved, the bowl and the wall section intersect along a curved line 8, and the pocket formed is deepest at a point immediately adjacent the center of the partition, with the result that all parts of the pocket drain toward said point, which is indicated at 9.

At this point 9 the partition 7 is formed with an aperture 10 and since this aperture is still a considerable distance above the central bottom point 11 of the bowl, any liquid draining through the hole will gravitate toward the center of the bowl.

The manner of using my invention will be readily understood from the foregoing description. The crisp breakfast food is poured, usually from a commercial container, into the main compartment of the bowl.

The user then empties the cream into the pocket or minor compartment 6 and the latter drains completely from the pocket into the lower section of the bowl, entirely out of contact with the main part of the breakfast food.

The user may now dip his spoon into the bowl sufficiently deep to secure a portion of the cream and in lifting the spoon will remove a desired amount of the breakfast food which thus remains crisp until it reaches the mouth of the user.

The size of the aperture 10 should preferably be such that it somewhat retards the flow of the cream so that the latter would be fed into the bottom of the main compartment slowly and substantially in timed relation to the emptying of the bowl.

I claim:

A bowl of the character described having an annular rim section and a rounded bottom section merging thereinto and a vertical partition near a portion of the rim section and formed on a curve reverse to that of the bowl so as to form a special compartment, each part of which drains toward a central point, the partition having a hole at said point communicating with the main portion of the bowl.

EDITH PHILLIPS SMITH.

166

May 14, 1940. L. J. L'HEUREUX 2,200,696

CHILD'S COAXER DISH

Filed Oct. 11, 1938

Fig. 1.

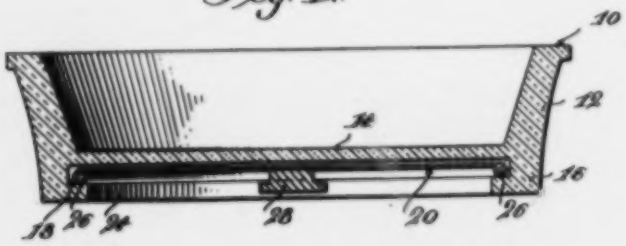



Fig. 2.

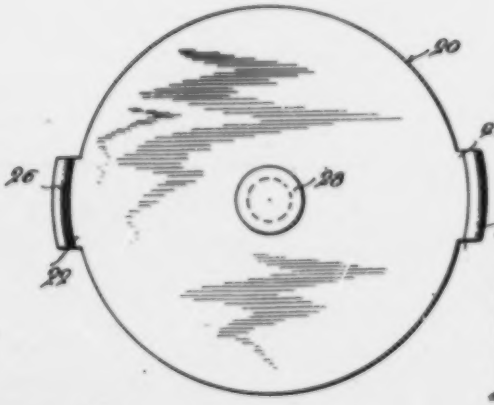



Fig. 3.

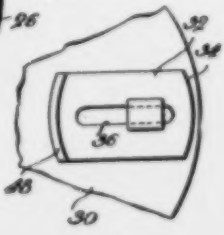



Fig. 5.

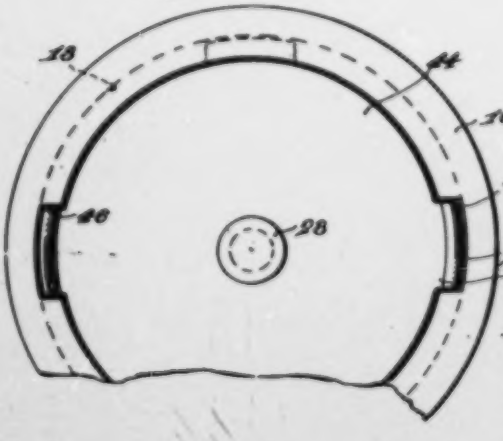
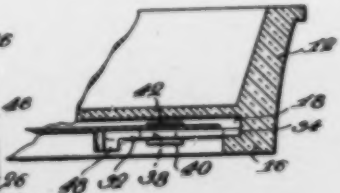



Fig. 4.




Luke J. L'Heureux
INVENTOR

By Victor J. Evans & Co.
ATTORNEYS

# UNITED STATES PATENT OFFICE

2,200,696

## CHILD'S COAXER DISH

Lake J. L'Heureux, Jasper, Ala.

Application October 11, 1938, Serial No. 234,457

2 Claims. (Cl. 65—15)

My invention relates to dishes such as bowls, saucers or plates, and has among its objects and advantages the provision of an improved child's coaxer dish.

An object of my invention is to provide a dish designed to stimulate a child's interest in eating by providing his favorite comics, nursery rhymes, etc., in the bottom of the dish and which cannot be seen until his cereal or other foods are completely eaten. More specifically, the dish embodies a transparent bottom in combination with a base structure embodying means facilitating the mounting and substitution of inserts in the nature of comics, nursery rhymes, pictures, etc.

In the accompanying drawing:

Figure 1 is a vertical sectional view of a dish embodying my invention;

Figure 2 is a plan view of the insert holder;

Figure 3 is a fragmentary view of a modified form of insert;

Figure 4 is a sectional view of a portion of a dish illustrating the manner in which the insert holder of Figure 3 is associated therewith; and

Figure 5 is a fragmentary bottom plan view of a dish embodying a different form of insert holder.

In the embodiment selected to illustrate my invention, I make use of a dish 10 which includes a side wall 12 and a transparent bottom 14. Side 12 is extended below the bottom 14 to provide a flange 16 which constitutes a base for the dish as well as means for mounting the inserts. Dish 10 may be formed of any suitable material so long as the bottom 14 is of transparent properties. Figure 1 illustrates a dish in the nature of a bowl of circular configuration, although the shape may be varied considerably.

I provide the flange 16 with an internal groove 18 adjacent the bottom 14. Groove 18 supports an insert mount 20. According to Figure 2, insert mount 20 is of circular shape and includes two diametrically opposed tongues 22. As illustrated in Figure 1, the insert mount comprises relatively thin material. I shape the mount of such diameter as to pass easily through the opening 24 defined by the flange 16, but the tongues 22 extend beyond the periphery of the mount so as to position their ends in quite snug relation with the vertical wall of the groove 18. Each tongue is fashioned to provide a bead 26, which beads are receivable within the recess 18 and support the mount 20 in close relation with the bottom face of the bottom 14.

I prefer to employ flexible material for the insert mount, such as Celluloid or other equivalent material. Centrally of the mount I secure a knob 28 which facilitates manipulation of the mount. There is sufficient space between the upper face of the insert mount 20 and the bottom face of the bottom 14 for the reception of inserts in the nature of paper slips printed with comics, nursery rhymes, pictures, etc. The insert mount may be flexed for bringing the tongues 22 into receiving relation with the groove 18. Flexing and manipulation of the mount is facilitated through the medium of the knob 28. Thus the mount may be flexed for positioning the tongues 22 in alignment with the groove 18 after which the mount will flatten and project the tongues into the groove. Disconnection is made by merely exerting a pull on the knob 28.

Figures 3 and 4 illustrate a fragmentary portion of the dish of Figure 1 in combination with a differently constructed insert mount. The plate or insert mount 30 is devoid of the integrally connected ears 22, but is provided with two latch plates 32 located at diametrically opposite points. Since both latch plates are identical in construction and operation, the description will be confined to one. The latch plate 32 illustrated includes a curved end 34 which may be retracted to a position within the peripheral contour of the plate 30, as in Figure 3, or projected beyond the peripheral contour, as illustrated in Figure 4. The plate is provided with a longitudinal slot 36 which loosely receives a flat pin 38 shaped to restrain the plate from relative rotary movement. The pin 38 includes a head 40 which holds the plate in frictional relation with the mount 30, while the pin is extended through an opening in the mount and rivsted, as at 42. Thus the plate may be shifted outwardly and inwardly. Figure 4 illustrates the mount 30 connected with the dish, at which time the latch plates 32 are projected into the groove 18.

Figure 5 illustrates a slightly different form of insert mount. The mount or plate 44 may be identical with that disclosed in Figure 2, while the flange 16 is recessed at 46 to provide accommodation for the tongues 22. In this construction, the insert mount 44 is rotated to position the tongues 22 in registration with the grooves or recesses 46 to permit the mount to be pushed home. As the mount is pushed home, the mount is rotated for bringing the tongues 22 out of registration with the recesses 46, as indicated in dotted lines in Figure 5. Similarly, the mount 44 is disconnected by merely rotating the same for bringing the ears into registration with the recesses.

168 In all the forms described, the dish embodies an insert mount which is easily removed or placed in position. The inserts may take various forms such as paper clippings in the nature of comics, nursery rhymes and pictures of interest to the children. The inserts are incorporated in the bottom of the dish and cannot be seen until the cereal or other foods are completely eaten. The pictures are easily changed to maintain the interest of the child, and by rousing the child's curiosity as to what lies underneath, he will soon make a game of his eating.

Without further elaboration, the foregoing will so fully illustrate my invention that others may, by applying current knowledge, readily adapt the same for use under various conditions of service.

I claim:

1. A dish of the type described comprising a receptacle unit having a transparent bottom, a grooved flange projecting below the bottom, a mount in the nature of a plate, means cooperable on the mount and in said groove for holding the mount in connected relation with the flange, said mount being spaced from the bottom to house a sheet-like insert, and a knob depending from the mount, said flange being of such depth as to house the mount and constituting a base for the dish.

2. A dish of the type described comprising a receptacle unit having a transparent bottom, a flange projecting below the bottom, the inner face of said flange being provided with a groove and recesses communicating with the groove and intersecting the bottom edge of the flange, a mount shaped to pass inside the flange and having tongues arranged to pass through said recesses, said mount being rotatable for positioning the tongues out of registration with said recesses for connecting the mount with the flange.

3. A dish of the type described comprising a receptacle unit having a grooved flange projecting below the bottom, a mount in the nature of a plate, latch means slidably related to the mount and arranged to be projected into said groove for connecting the mount with the flange, and a knob depending from said mount, said flange being of sufficient depth to house the knob and constituting a base for the dish.

LUKE J. L'HEUREUX.

170

July 9, 1940. I. A. SMITH 2,207,417

CEREAL BOWL

Filed April 18, 1938

Fig. 1

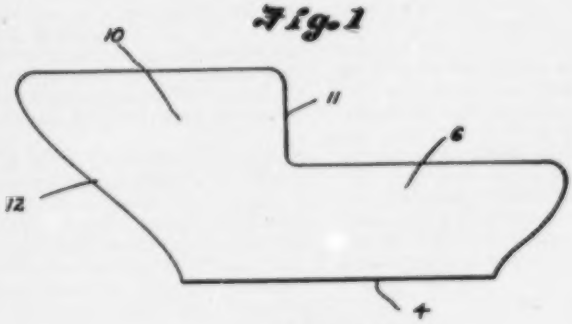



Fig. 2

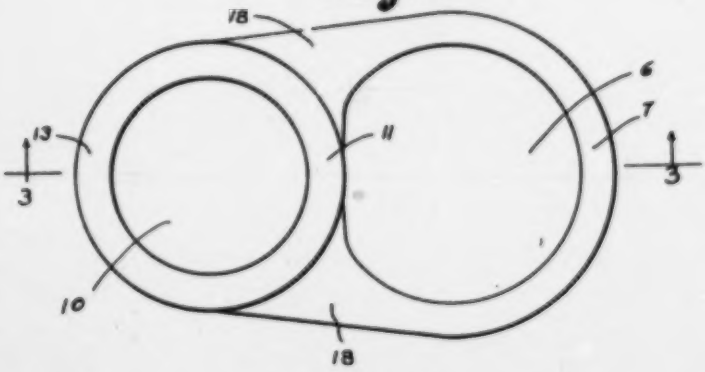



Fig. 3

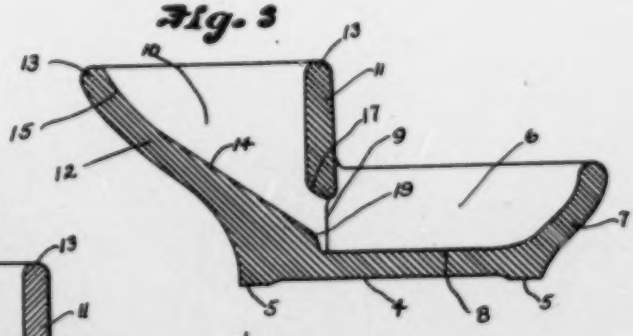
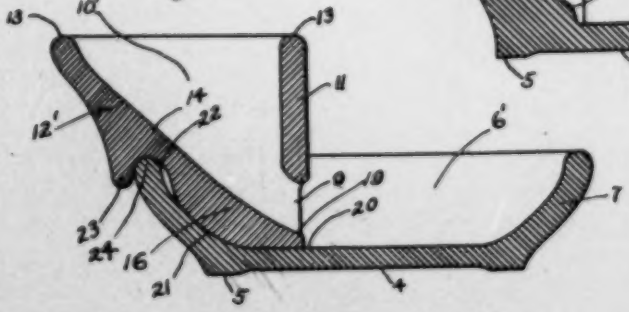



Fig. 4




INVENTOR
Israel A. Smith
BY Alfred R. Fuchs
ATTORNEY

Patented July 9, 1940

2,207,417

171

# UNITED STATES PATENT OFFICE

2,207,417

## CEREAL BOWL

Israel A. Smith, Independence, Mo.

Application April 18, 1938, Serial No. 202,713

5 Claims. (Cl. 65—15)

My invention relates to cereal bowls, and more particularly to a hopper feed cereal bowl.

It is a purpose of my invention to provide a cereal bowl that comprises a liquid receiving bowl portion and a cereal receiving hopper portion, that are so relatively arranged and located that any dry, loose cereal that may be placed in the hopper portion will be fed into the liquid retaining portion by gravity as the cereal is eaten from the liquid receiving portion of the device, or otherwise moved away from the discharge opening of the hopper. Cereals that are precooked, or otherwise prepared for eating in a dry state, are usually in the form of granules, flakes or other particles, that are readily fed by gravity from a hopper. Such cereals are more palatable and are also more readily digested, if the same are not soaked in the liquid before being eaten. By retaining the crispness of the particles to as great an extent as possible, the cereal has to be chewed more thoroughly than if it is allowed to absorb a large part of the liquid, such as milk or cream, with which it is usually eaten, the chewing, of course, aiding in the digestion of the cereal.

It is an important purpose of my invention to provide a dish that is so made that the liquid, such as cream or milk, can be placed in a bowl portion provided therefor, and the dry, loose cereal in a hopper portion provided for the cereal, and fed from said hopper portion gradually into the liquid holding portion of the dish, so that, as cereal and liquid are removed with a spoon from the bowl portion, the dry cereal will be fed into the liquid receiving bowl portion to replace the cereal so removed. Thus the cereal from the hopper will only be in the liquid in the bowl portion a short period of time.

It is also a purpose of my invention to provide a cereal dish of the above mentioned character, which, due to the movement of the cereal into the liquid receiving portion, will interest a child eating cereal, in the operation of eating the same, to an extent that would not otherwise exist in children who do not particularly care to eat cereals of this character, thus aiding in feeding such children cereal by arousing their interest in the process of eating the same.

My improved dish can be made with a hopper portion integral with the liquid receiving portion, or with the hopper portion detachable from the liquid receiving portion. It is an important purpose of my invention to so arrange and construct the bowl and hopper portions, that the same can be readily cleaned and kept sanitary, and, preferably, the hopper portion is spaced laterally from the liquid receiving portion, so that the cereal will enter one side of the liquid receiving bowl from the hopper. The exit from the hopper, or discharge opening, is, preferably, spaced above the bottom of the liquid retaining portion to such an extent that, with the usual amount of cream or milk eaten with cereal of this character, there will be little, if any, liquid entering the hopper portion.

Other objects and advantages of my invention will appear as the description of the drawing proceeds. I desire to have it understood, however, that I do not intend to limit myself to the particular details shown or described, except as defined in the claims.

In the drawing:

Fig. 1 is a view in side elevation of one form of my improved cereal bowl.

Fig. 2 is a top plan view thereof.

Fig. 3 is a vertical sectional view through the same, taken substantially on the line 3—3 of Fig. 2, and

Fig. 4 is a section similar to Fig. 3, of a modified form of the invention.

Referring in detail to the drawing, my improved cereal bowl comprises a body portion having a bottom 4, which may be flat, or substantially so, and may be provided with a slightly projecting rim portion 5, as is customary in bowls or dishes of this character. A bowl portion 6, from which the cereal is to be eaten, is provided, and has an upwardly curving outwardly flaring side wall 7. Said bowl portion is shown as being substantially circular in character, but, of course, can be varied in shape as desired. The bottom 8 of said bowl portion is depressed below an opening 9, provided in one wall of the bowl portion for a purpose to be described below.

Extending upwardly from one side of the bowl portion is a hopper portion 10, which has a wall 11 extending substantially vertically from the bowl portion 6, so as to form a partition between the bowl portion 6 and the hopper portion. The wall portion 11 is curved, being shown as being curved substantially on the surface of a cylinder in the drawing, and merging with an inclined wall 12, the circular rim or lip 13 extending around the top of the hopper portion 12 and the vertical wall portion 11. The inclined wall portion 12 has an inner inclined face 14, having a portion that approaches straightness, between the top and bottom ends thereof, and is concavely curved at 15 near the top end thereof. The bottom edge of the wall 11 adjacent the opening 9 is convexly

curved at 17, so as to offer no resistance to the flow of cereal toward the opening 9. The width of the bottom 4 is, of course, such that there will be no tendency for the dish to tip on the side thereof that is provided with the hopper 10. The hopper portion 10 and bowl portion 6 may be joined in any desired manner, as by means of the web portions 18, so as to provide a dish of smooth contour and without any difficult-to-clean recesses therein.

It will be obvious that, if liquid, such as milk or cream, is placed in the portion 6 of the dish, and dry, loose cereal in the hopper portion 10, the dry, loose cereal will flow from the discharge opening 9 from the hopper into the bowl portion 6, and thus accumulate in a pile near the opening 9 in the liquid in the bowl portion 6. While ordinarily a person would not place any more liquid in the bowl than would reach to the bottom edge 19 of the opening 9, yet if more liquid should be added after cereal has flowed into the bowl portion from the hopper portion, the cereal itself will prevent the liquid from entering the bottom portion of the hopper to any material extent, as dry cereal will continue to flow into the bowl portion as rapidly as it is removed with the spoon. The preferable way of using the bowl is to fill the hopper portion with dry cereal to the extent desired, and then add milk or cream, as desired, in the bowl portion 6.

If desired, the hopper portion can be made separable from the bowl portion to facilitate cleaning of the dish, the bowl portion 6', shown in Fig. 4, being of this character, and having a bottom 4, as previously described, and a concave side wall portion 7, the bowl portion 6' being made substantially in the form of an ordinary circular cereal bowl, such as is commonly used. The hopper portion 10' is detachable from the bowl portion 6' and has a substantially vertical wall portion 11 that merges with the inclined wall 12' in a similar manner to that described in connection with the form of the invention shown in Figs. 1 to 3, inclusive. The wall 12' inclines downwardly in a similar manner to the wall 12, to the discharge opening 9' of the hopper, which is located slightly above the bottom 28 of the bowl portion 6'.

The outer surface of the inclined wall 12' is, preferably, provided with a convex portion 21, that conforms substantially to the curvature of the inner face of the curved side wall 7 of the bowl 6', and has a hook-like formation comprising a concave recess 22 and a projection 23 for engaging over the rim portion 24 of the bowl 6', to detachably mount the hopper portion 10' on the bowl portion 6'. The operation of the device in the form shown in Fig. 4 is substantially the same as described in connection with the form shown in Figs. 1 to 3, inclusive.

What I claim is:

1. In a cereal dish, a wide shallow bowl and a cereal hopper taller than said bowl extending into said bowl, said hopper being located at one side of said bowl and having a steeply inclined bottom wall the lower end of which is disposed adjacent the bottom of said bowl, and a substantially vertical wall separating said hopper from said bowl closed except for an outlet at its lower end adjacent the bottom of said bowl disposed to feed cereal by gravity from the lower end of said inclined bottom wall into said bowl near the bottom thereof.

2. In a cereal dish, a bowl and a cereal hopper extending into said bowl a substantial distance, said hopper having the bottom end thereof disposed adjacent the bottom of said bowl and having an outlet disposed adjacent its bottom end to feed cereal by gravity into said bowl, said hopper having means thereon detachably engaging the rim of said bowl to hold the same in operative position.

3. In a cereal dish, a bowl and a cereal hopper extending into said bowl, said hopper having an inclined bottom wall the lower end of which is disposed above but near the bottom of said bowl, said hopper having an outlet disposed to feed cereal from the lower end of said inclined bottom wall into said bowl near the bottom thereof, said hopper having a rib and groove formation thereon detachably engaging the rim of said bowl to hold the same in operative position.

4. In a cereal dish, a bowl and a cereal hopper extending into said bowl, said hopper having an inclined bottom wall the lower end of which is disposed above but near the bottom of said bowl, said hopper having an outlet disposed to feed cereal from the lower end of said inclined bottom wall into said bowl near the bottom thereof, said hopper having a rib and groove formation thereon detachably engaging the rim of said bowl to hold the same in operative position, the lower end of said hopper engaging the bottom of said bowl.

5. In a cereal dish, a wide shallow liquid receiving bowl having substantially flat bottom, and a cereal hopper taller than said bowl mounted at one side of said bowl and extending into said bowl, said hopper having an upright wall separating said bowl from said hopper, said hopper having a discharge opening below the bottom edge of said wall disposed adjacent the bottom of said bowl but spaced slightly above said bottom, said hopper having a side wall portion extending from near the top thereof downwardly, in converging relation to said upright wall, to said discharge opening at such an inclination as to feed cereal by gravity from said hopper through said opening onto the bottom of said bowl.

ISRAEL A. SMITH.

174

Dec. 10, 1940. K. IDE ET AL 2,224,683

FEEDING METHOD AND ARTICLE

Filed April 27, 1938

Fig. 1.




Fig. 2.

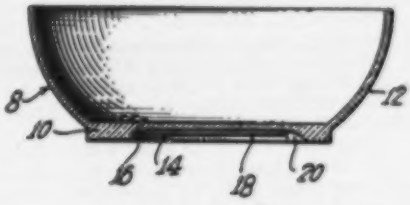



Fig. 3.



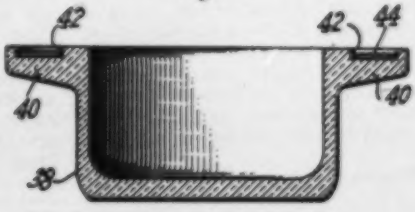

Fig. 4.




Fig. 5.




Fig. 6.




INVENTORS
KNOX IDE
BY GEORGE S. HILLS
John M. Lauck
ATTORNEY

# UNITED STATES PATENT OFFICE

2,224,683

## FEEDING METHOD AND ARTICLE

Knox Ide, Jersey City, N. J., and George S. Hills, New Rochelle, N. Y.

Application April 27, 1938, Serial No. 204,530

2 Claims. (Cl. 65—15)

The present invention relates to a method and article for feeding juveniles. More particularly, it relates to a method of inducing juveniles to partake of nourishment and utensils for containing foods and beverages, such as plates, bowls, cups, and glasses having amusement or educational features associated therewith, for use in carrying out the method.

Nourishment receptacles heretofore used in the feeding of children, when decorated at all, have had the decorations permanently associated therewith, with the result that the child soon becomes familiar with the decoration and loses all interest in it. Also, decorations which are so permanently associated with the utensil become obliterated due to washing and cleaning unless the utensil is made of high-grade china which will take firing sufficiently to insure the permanency of the decoration. This has caused utensils of this type to be prohibitively expensive since such utensils are always subject to breakage on the part of the child.

It is an object of the present invention to provide a method of inducing juveniles to partake of nourishment.

It is a further object of the present invention to provide a decorated container or utensil for foods and beverages.

It is a further object of the invention to provide a decorated container for foods and beverages having educational and amusement features.

It is a further object of the invention to provide a decorated utensil for food or beverages having replaceable educational or amusement features.

It is a further object of the invention to provide an eating or drinking utensil or receptacle having provision for carrying replaceable pictures, prints, etc., and which is sanitary and capable of being easily cleaned and sterilized without injury to the decorative or educational feature.

It is a further object of the invention to provide an eating or drinking receptacle which can be employed with various serial type educational and/or amusement features.

Other objects and advantages, if not specifically pointed out, will be apparent to those skilled in the art upon recourse to the following detailed description of what are now considered the preferred forms of the invention.

In the drawing:

Fig. 1 is a top-plan view of a child's bowl constructed in accordance with the invention;

Fig. 2 is a central vertical cross-sectional view taken substantially on the plane indicated by line 2—2 of Fig. 1;

Fig. 3 is a top-plan view of a modified form of the bowl illustrated in Fig. 1;

Fig. 4 is a top-plan view of another modified form of the invention;

Fig. 5 is a top-plan view of a further modified form of the invention, and

Fig. 6 is a central vertical sectional view taken substantially on the plane indicated by line 6—6 of Fig. 5.

Referring to Figs. 1 and 2, the eating utensil comprises a dished container or bowl 8 which may be formed of glass, natural or synthetic resin, or other moldable plastic or similar material. It is important that the bottom section 10 of the bowl be formed of some translucid, preferably transparent, material in order that articles placed beneath the bottom section 10 will be visible therethrough. The side walls 12 of the bowl may be formed of either transparent or opaque material, as desired, and may be provided with any desired decorative treatment. The shape of the bowl shown in Figs. 1 and 2 is intended merely to provide an example of forms which the bowl may take and the bowl may be given any desired configuration. It is not necessary that the container be made in the shape of a bowl, but it may be formed as a cup, glass, plate, etc.

The bottom section 10 of the bowl is provided, at its underneath portion, with a recess 14 which extends any desired distance into the bottom section. The side wall of the recess is given a slight bevel as shown at 16 for a purpose which will be later described.

A plate 18, which has been shown as a disk but which may be square, oblong or any other desired shape, is made of a size such that when it is gently pressed into the recess 14 it will seat snugly into position and be retained in the recess solely by frictional contact between its periphery and the side-walls of the recess.

The plate 18 may be made of chipboard, fiberboard, Celluloid, metal, wood, or any other desired material which will give it sufficient rigidity to be held in position within the recess by frictional contact substantially without being distorted.

A niche 20 is formed in the side wall of the recess to enable a fingernail or some sharp pointed instrument to be inserted beneath the plate 18 to dislodge it from the recess.

The plate 18 is provided preferably on its top

surface with a figure 22. The figure 22 may be in the form of a picture, print, map or any other desired design. In addition, the print may contain any desired symbol, for example, a letter of the alphabet corresponding to the first letter of the name of the object depicted by the design. In the example given the picture is that of a horse and it also carries the letter H. Throughout the specification and claims the term "design" will be used to denote any of the foregoing enumerated types of design or any other desired design.

The design may be applied to the plate 18 by photolithographic processes, decalcomania processes, off-set printing, hand painting, embossing, engraving or any other of the well-known methods of forming designs.

The modification of the invention illustrated in Fig. 3 differs from that shown in Figs. 1 and 2 in that the recess 14 is supplanted by a slot 24 opening into the base of the utensil or receptacle from the side. The bottom of the slot may be cut out as shown at 26 to facilitate cleaning of the receptacle, but this is not necessary if it is desired that the bottom be solid.

A slide 28, which corresponds to the plate shown in Figs. 1 and 2, is slipped into position from the open side of the slot, and the slide may be provided with any desired design 30 corresponding to the design 22 of the modification shown in Figs. 1 and 2. In the illustrated example the design is a picture of a dog accompanied by the letter D.

The modified form of the utensil illustrated in Fig. 4 differs from that shown in Figs. 1 and 2 in that a recess 32, corresponding to the recess 14, is formed in the top portion of the bottom section of the bowl. A plate 34 bearing a design 37 is snugly seated in position in the recess 32 and retained therein by frictional contact between the periphery of the plate and the side wall of the recess. The side wall of the recess in this modification is also provided with one or more niches 38 to enable the plate 34 to be easily removed. In the example shown in Fig. 4 the design 37 is a picture of a chicken and it is accompanied by the letter C.

The modification illustrated in Figs. 5 and 6 comprises a bowl or other container 38 which may be formed of any desired material and is provided with a flange around its periphery, preferably near the upper portion of the bowl. The flange 40 has formed therein an annular recess 42 which receives an annular plate 44.

The plate 44 may be provided with any desired design, for example, the entire alphabet, as disclosed. Annular plate 44 may be made slightly smaller than the recess 42 so that the plate may be rotated within the recess by light finger pressure.

The decorated utensil of the present invention can be advantageously used in connection with the feeding of juveniles. To this end, a series of plates may be employed, each of which bears a design in which the child will be interested and may be used in an educational way by associating educational features with the designs. For example, a series of plates may be provided, each of which bears one letter of the alphabet and some identifying picture, for example the plate bearing the letter A can have a picture of an apple associated therewith and so on through the alphabet. The series of plates and the cooperative food or beverage container form an attractive and useful juvenile feeding set.

In the practice of the method of the invention, a plate bearing a design in which it is known that the child will be interested is inserted in position in the recess of the container and the container is filled with the food comprising the nourishment for a feeding period. The child is then told that there is a picture beneath the food which he would enjoy seeing but which he cannot see until all of the food is eaten. This has been found to be effective in inducing children to partake willingly of all of their nourishment at times when they would otherwise refuse their food or eat it reluctantly. When the child consumes the nourishment he then sees the picture and may be told any story in connection therewith that the attendant sees fit. He may also be told that he will be permitted to see another picture at his next feeding period, thereby creating an air of expectancy on the part of the child and encouraging him to partake of his nourishment in a way which does not impress upon him the fact that he is being encouraged to eat his food. This places the child in a mental state such that he derives the greatest benefit from his food in addition to the pleasure also obtained.

When the meal has been completed the plate may be readily removed from the recess in the container by inserting a fingernail in one of the niches, when the modification shown in Figs. 1, 2 and 4 is used, by sliding the plate out of the slot when the modification illustrated in Fig. 3 is used or by up-turning the receptacle and gently tapping the plate out of the recess when the modification shown in Figs. 5 and 6 is used.

The container then can be thoroughly washed and sterilized by boiling without damaging the design.

In each of the modifications of the invention disclosed there is always at least one surface of the design-bearing plates, such as a face or an edge, exposed to facilitate removal of the plate.

In using the modified form of the invention illustrated in Figs. 1 to 3, inclusive, it is possible to place the plate in the recess with the design facing downwardly. It is then necessary for the child to consume all of the food before the bowl can be turned upsidedown so that he can see the picture, and he is thereby prevented from pushing the last portion of the food to one side in order to see the picture before he has eaten all of the food.

In the modified form of the invention illustrated in Fig. 4 wherein the design is in contact with the food, it is preferable that the design be made water-proof, for example, by placing a coating of water-proof lacquer over the entire face of the design.

When using the modified form of the invention illustrated in Figs. 5 and 6, the plate 44 is placed within the recess 42 so that the first character of the series comprising the design is in position to be observed by the child. This character is then explained to him and if desired he may be told a story in regard to the character, and the plate 44 is then revolved so that the next character of the design in order can be observed by him. The character is explained as before. This is repeated throughout the entire series and while the child's attention is thus occupied he is induced to consume his food without appreciating that such is taking place.

The letters of the alphabet have been illustrated as a design for the plate 44 as an exemplification and the letters may be replaced by other

characters, for example, fictitious persons, animals, characters from fairy tales, etc.

The foregoing details have been given for the purpose of explanation and not limitation, since many changes may be made in the physical embodiments and the method disclosed without departing from the spirit of the invention which is to be limited only by the appended claims.

Having described the invention, what is claimed is:

1. A nourishment container comprising a bowl shaped body having a bottom section formed of transparent material, said bottom section being provided with a recess having a substantially straight and bevelled sidewall extending from the underneath side of said bottom section to a point beneath the top side thereof, a plate removably disposed within said recess and retained therein without distortion solely by frictional contact of the periphery with said sidewall, and a design carried by the top portion of said plate.

2. A nourishment container comprising a dished receptacle formed of transalucid material and having a recess extending upwardly from the lower surface of the bottom section thereof having a substantially straight sidewall which does not extend entirely through the bottom section and is slightly bevelled, a plate snugly disposed within said recess and retained therein without distortion from its normal shape solely by frictional contact between the periphery of said plate and the wall of said recess, and a design carried by the upper surface of said plate.

KNOX IDE.
GEORGE S. HILLS.

Nov. 16, 1948. B. B. MANASTER 2,453,922
CHILD'S COMBINATION APPETITE-STIMULATING AND AMUSEMENT DEVICE
Filed July 2, 1948




Fig. 1.




Fig. 2.

Fig. 3.

INVENTOR.
Ben B. Manaster
BY Clarence E. Shively
His Attorney.

# UNITED STATES PATENT OFFICE

2,453,922

## CHILD'S COMBINATION APPETITE-STIMULATING AND AMUSEMENT DEVICE

Ben B. Manaster, Chicago, Ill.

Application July 2, 1945, Serial No. 36,773

4 Claims. (Cl. 46—141)

1

This invention relates to child's combination appetite-stimulating and amusement devices.

An object of the invention is to provide a character simulating an animal such, for example, as a dog in a sitting position, adjacent a dish or bowl to stimulate a child's interest in eating by arranging the head of the character in a position which presents an appeal for something to eat, and which head is capable of vibratory or oscillating action by virtue of contact with a feeding spoon, whereby to simulate feeding action. It is the intent that this character thus arranged adjacent the dish or bowl will have the effect of inducing the child to alternately feed itself and the character, thus stimulating the child to consume its food.

Other objects will appear hereinafter.

The invention consists in the novel combination and arrangement of parts to be hereinafter described and claimed.

The invention will be best understood by reference to the accompanying drawings showing the preferred form of construction, and in which:

Fig. 1 is a perspective view of the invention showing the same in sitting position with respect to a bowl or dish;

Fig. 2 is a side elevational view of the same:

Fig. 3 is a vertical sectional detail view of the same.

To accomplish the several objects of my invention, I provide a character 10 which, in the present instance, is formed in the shape of a dog in sitting position upon its hind legs 11. The front legs or paws 12 of the dog are arranged with respect to the body 13 thereof so as to provide an undercut 14. The paws 12 slightly depend into the dish 16 so that the dish and the body 13 cannot be easily moved apart.

Formed through the body 13 is a channel or passage 15. The undercut 14 is of such depth as permits the bowl or dish 16 to be positioned with respect to the body 13 with the edge portion 17 disposed within the undercut 14 beneath the paws 12, with the channel 15 communicating with the interior of the bowl 16. By reason of the character of the wall 18 of the cut-out portion, bowls of various heights may be used, such as indicated at 16. This follows from the fact that the curved wall 18 permits the positioning of bowls of various heights within the undercut, with the interior of the bowl communicating with the channel 15 so that food or liquid passing through the channel 15 will move or flow into the bowl without spilling therefrom.

The head 20 of the dog is normally mounted

2

in spaced relation with respect to the neck portion 21 thereof with the portion 22 of the head [illegible] overlapping the nape 23 of the neck, [illegible] the overlapping portion 22 of the head [illegible] contact the nape of the neck to limit the [illegible] of the head 20 upwardly.

The head 20 is supported for vibratory or oscillatory movement upon the body 13 by means of a shaft [illegible] one end of which is fixedly embedded in the head 20 as at 25 and the opposite end 26 of which is removably projected in an opening 27 formed in the body 13.

Portions of the head and body are removed to provide clearance between the head and body and the shaft 24 as at 28. This clearance permits the head to vibrate or oscillate vigorously when contacted by the end of a spoon 29.

As before stated, the object of this invention is two-fold: First, to provide amusement for a child during eating, and, second, to stimulate eating of the food by the child. This may result from the fact that the child is instructed or suggested to give spoonfuls of food alternately to itself and the dog or other character.

The head of the dog normally is positioned with respect to the body so that the jaws 30 and 31 of the dog are in partially open, or "begging," position, being spaced apart a sufficient distance to permit initial insertion of the end of the spoon between the jaws 30 and 31. As the child attempts to discharge the food from the spoon into the mouth of the dog, the head 20 by pressure of the spoon 29 against the jaw 30 will be tilted rearwardly against the action of the shaft 24. When this pressure of the spoon is removed from jaw 30, the shaft 24, being of resilient material, will cause the head to vigorously vibrate or oscillate to simulate eating action by the dog. Food deposited in the mouth of the dog between the jaws 30 and 31 will be guided to the channel 15 by the jaw 30, which is concave transversely to provide a groove 31' leading to the channel 15, and such food will pass through the channel 15 back into the bowl 16. To a great extent, the overlapping portion 22 of the head will serve to prevent food from passing rearwardly out between the head of the dog and the body thereof.

While I have illustrated the character in the form of a dog, it is manifest that the character may take other forms of animals.

Inasmuch as the shaft 24 is fixedly secured to the head 20, the head may be removed by withdrawing the end 26 of the shaft from the opening 27 for cleansing purposes.

It will be noted that the relative position be-

tween the jaws of the head 28 and the dish 16 is such that the jaws project over the rim of the bowl or dish so that any food spilled during the feeding of the dog or other character, will fall back into the bowl 16.

While I have illustrated and described the preferred form of construction for carrying my invention into effect, this is capable of variation and modification without departing from the spirit of the invention. I, therefore, do not wish to be limited to the precise details of construction set forth, but desire to avail myself of such variations and modifications as come within the scope of the appended claims.

Having thus described my invention, what I claim as new and desire to protect by Letters Patent is:

1. A child's combination appetite-stimulating and amusement device comprising a body having an undercut portion formed therein for the reception of the edge portion of a dish and having a channel therein inclined downwardly and forwardly toward the dish for communication with said dish, said body having a protruding jaw portion providing a rest for the end of a spoon delivering material to said channel, a head for said body and arranged over said channel and having a jaw portion in spaced confronting relation with respect to the jaw portion of said body and adapted to be engaged by the end of said spoon and tilted relative to said body by said spoon, and means connecting the head to the body for oscillatory movement with respect to the body when said spoon is moved from engagement with respect to said head.

2. A child's combination appetite-stimulating and amusement device comprising a body having an undercut portion formed therein for the reception of the edge portion of a dish and having a channel therein inclined downwardly and forwardly toward the dish for communication with said dish, said body having a protruding jaw portion providing a rest for the end of a spoon delivering material to said channel, a head for said body and arranged over said channel and having a jaw portion in spaced confronting relation with respect to the jaw portion of said body and adapted to be engaged by the end of said spoon and tilted relative to said body by said spoon, and means connecting the head to the body for oscillatory movement with respect to the body when said spoon is moved from engagement with respect to said head, said means including a flexible shaft fixedly secured to the head and removably inserted in an opening formed in the body.

3. A child's combination appetite-stimulating and amusement device comprising a body having an undercut portion formed therein for the reception of the edge portion of a dish and having a channel therein inclined downwardly and forwardly toward the dish for communication with said dish, said body having a protruding jaw portion providing a rest for the end of a spoon delivering material to said channel, a head for said body and arranged over said channel and having a jaw portion in spaced confronting relation with respect to the jaw portion of said body and adapted to be engaged by the end of said spoon and tilted relative to said body by said spoon, and means connecting the head to the body for oscillatory movement with respect to the body when said spoon is moved from engagement with respect to said head, said head having a portion opposite the jaw portion thereof disposed in overlapping relation with respect to an adjacent portion of said body.

4. A child's combination appetite-stimulating and amusement device comprising a character simulating a dog in sitting position upon its hind legs with its front legs projecting forwardly over a cut-out portion provided in the body for the reception of the edge portion of a dish, with the ends of the front legs projecting over the rim of the dish, said body having an inclined downwardly extending channel formed therein for communication with said dish and said body being provided with a jaw portion providing a rest for the end of a spoon, a head for said body providing a jaw portion in confronting relation with respect to the jaw of said body and adapted for engagement with said spoon, a flexible shaft connecting the head to the body, said head being adapted to be tilted upwardly and away from said body by said spoon and when said spoon is disengaged from said head, said flexible shaft serving to oscillate said head to simulate eating action.

BEN B. MANASTER.

No references cited.

259 United States of America, }
Northern District of Illinois. } ss:

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Designations filed in this Court in the cause entitled: David C. Trager, doing business as Topic Toys, and Eoina Nudelman, an Individual, Plaintiffs *vs.* Crest Specialty (Not Inc.), a limited partnership consisting of Ben B. Manaster, Rose Manaster, Carol Ruth Manaster, and Sol Eliot, Defendants, No. 49-C-8, as the same appear from the original records and files thereof now remaining among the records of the said Court in my office, except the original exhibits which are incorporated herein by direction of this Court.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 16th day of February, 1950.

(Seal)

Roy H. Johnson,
*Clerk.*

By Gizella Butcher,
*Deputy Clerk.*

260 IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

David C. Trager, doing business as Topic Toys, and Eoina Nudelman, an individual,
*Plaintiffs-Appellees,*
*vs.*
Crest Specialty (Not Inc.), a limited partnership consisting of Ben B. Manaster, Rose Manaster, Carol Ruth Manaster, and Sol Eliot,
*Defendants-Appellants.*
} Appeal No. 10118.

## STIPULATION.

It Is Hereby Stipulated by and between the parties hereto, by their respective counsel, subject to the approval of this court, that the printing in the transcript of record of Defendant's Exhibit 5 (the file wrapper and contents of the application on which patent in suit 2,455,266 issued) may be dispensed with and said Defendant's Exhibit 5 may be treated before this court as a physical exhibit, and that the contents thereof may be referred to in the briefs and arguments and may be considered by this court.

Signed at Chicago, Illinois, this 24th day of February, 1950.

Sidney Neuman,
*Attorney for Plaintiffs-Appellees,*
Clarence E. Threedy,
*Attorney for Defendant-Appellant.*

It Is So Ordered:

.....
*United States Circuit Judge.*

Endorsed: Filed Feb. 27, 1950. Kenneth J. Carrick, Clerk.

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

---

I, Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed transcript of record, filed May 18, 1950, in:

Cause No. 10118.

David C. Trager, doing business as Topic Toys, and Eoina Nudelman,
*Plaintiffs-Appellees,*

*vs.*

Crest Specialty (Not Inc.),
*Defendant-Appellant,*

as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this 1st day of December, A. D. 1950.

(Seal)

Kenneth J. Carrick,
*Clerk of the United States Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Court of Appeals for the Seventh Circuit, held in the City of Chicago and begun on the third day of October, in the year of our Lord one thousand, nine hundred and fifty, and of our Independence the one hundred and seventy-fifth.

| | |
|---|---|
| David C. Trager, doing business as Topic Toys, and Eoina Nudelman, an individual,<br>*Plaintiffs-Appellees,*<br>10118 *vs.*<br>Crest Specialty (Not Inc.), a limited partnership consisting of Ben B. Manaster, Rose Manaster, Carol Ruth Manaster, and Sol Eliot,<br>*Defendants-Appellants.* | Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. |

And afterward, to-wit, on the sixteenth day of October, 1950, there was filed in the office of the Clerk of this Court the Opinion of this Court which said Opinion is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

---

No. 10118. October Term and Session, 1950.

---

David C. Trager, doing business as Topic Toys, and Eoina Nudelman, *Plaintiffs-Appellees,* *vs.* Crest Specialty (Not Inc.), *Defendant-Appellant.* } Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

---

October 16, 1950.

---

Before KERNER, DUFFY and LINDLEY, *Circuit Judges.*

LINDLEY, *Circuit Judge.* Defendants appeal from a judgment declaring plaintiffs' patent to Nudelman No. 2,455,266, issued November 30, 1948, valid and infringed. The appeal raises the vital issue of whether the trial court's findings are clearly erroneous.

Recognizing that parents frequently encounter difficulty in persuading their infant children to eat, Nudelman built a device intended to induce them to do so. The problem he faced and abortive attempts to solve it had been disclosed in various patented articles, such as "Coaxer" dishes. In his application, after reciting that it was "a well established fact that children in their early years are poor eaters and parents have to provide various attractions to interest them during feeding time," he stated that his object was to provide a stimulant, consisting of a simulated animal figure in the form of a small pig, having a body portion perched in an almost upright position upon the perimeter of a

child's feeding bowl.[1] The figure has a forwardly extending portion projecting toward the interior of the bowl and overlying a portion of it, formed by the animal's front legs. The pig is hollow. Its head opens, forming a mouth into which a spoon may be inserted. Extending from the mouth, in the words of the patentee, "solely downward," is a passageway, the rear wall of which forms an apron so that all the food put in will pass down into the bowl. When one part of the hinged head is raised and the mouth opened the content of the spoon is emptied into it and falls down the passage into the bowl. The device is provided with an undercut which fits upon and engages with the rim of the bowl, preventing separation of the figure from the dish during feeding to insure that food emptied into the image's mouth will pass back into the bowl. The portion of the figure overhanging the interior of the bowl does not extend all the way into that receptacle, so that the latter's area or capacity is not reduced in any way by the short downward passageway extending from the mouth. The underlying thought is to suggest that the animal is actually eating and swallowing, and thus to encourage and stimulate the child to follow the example, that is, to mimic the pig's action and take food itself. There was testimony that mothers who had experienced difficulty in feeding their infant children, by use of the device, had persuaded the youngsters to eat with much greater relish.

The District Court found the device to be unique and ingenious, to constitute a genuine improvement over any prior device and to be the first to teach the idea of providing an eating table companion for a young child. It found further that the feeding of the companion with the same food and from the same bowl and the appearance of the animal apparently consuming food provide a stimulant for the child to do likewise, and that the device is useful and novel and reflects patentable invention.

In attempting to prove anticipation, defendants relied

1. Typical Claim 2 is as follows: An amusement device comprising a figure formed to simulate a living creature, said figure comprising a body portion adapted to be placed adjacent the exterior of a feeding bowl, said body portion having a forwardly extending portion adapted to extend closely adjacent to and overlie a portion only of said bowl, said forwardly extending portion having a simulated mouth and a passage, said passage having walls extending solely downward from said mouth through said forwardly extending portion, whereby the contents of a spoon may be emptied into said simulated mouth and fall by gravity into said feeding bowl, said forwardly extending portion including means preventing lateral movement of said passage from over said bowl.

chiefly upon Smith No. 2,207,417, whose structure, the court found, is not only entirely unlike that of Nudelman but diametrically opposed in purpose and function, having in view an object entirely different from Nudelman's and providing a function entirely foreign to his. The other cited references are so far afield, as the court found and as we agree, that it is unnecessary to consider them. Upon all of the evidence submitted, the District Court found that anticipation had not been proved and that conception and production of a device such as that shown and described by Nudelman is beyond the skill of the mechanic and requires exercise of inventive genius.

A careful examination of the evidence is convincing that the trial court had before it adequate substantial evidence to justify its findings. Upon the issue as to validity the facts are such as to bring the case within the scope of such decisions as *Paramount Corp.* v. *American Tri-Ergon Corp.*, 294 U. S. 464, *Wahl Co.* v. *Andis Clipper Co.*, 66 F. 2d 162, *Pyle Nat. Co.* v. *Lewin*, 92 F. 2d 628 (CA-7), *Peckat Mfg. Co.* v. *Jacobs*, 178 F. 2d 794 (CA-7).

The court found also that defendants' device infringes and that it is "literally and in substance" responsive to the claims in suit. Thus, it said, defendants' product consists of an animal figure in the form of a puppy, the body portion being designed and intended to be positioned outside and closely adjacent to a feeding bowl, as in Nudelman, and having a forwardly projecting portion which provides and consists of a simulated mouth, a lower jaw, neck portion and paws, in which is a passageway like that of Nudelman, which also extends downwardly and in open, unimpeded communication with the bowl. The figure's head is separable, thus permitting the contents of the spoon to be emptied into the mouth, as in Nudelman. The front paws overhang the rim of the bowl so as not to reduce the capacity or area thereof. The device has an undercut which engages the bowl and prevents separation of the figure and bowl during feeding so that the food emptied into the figure's mouth will pass back to the bowl, as in Nudelman.

In this connection defendants contend that its passageway from the mouth down into the bowl does not proceed directly downward, as prescribed by Nudelman. It is perfectly obvious that the passageway of each device proceeds downward toward the bowl. Such is the function and such the necessary structure in each, for, otherwise, the essen-

tial object of carrying the food down from the head back into the bowl could not be achieved. Considering the description and specifications of Nudelman as well as his claims, it is clear that what he intended by his language was that the passageway should proceed downwardly, without such slant or impediment as would prevent the law of gravity from carrying the food downwardly, as opposed to a passageway proceeding horizontally or at such a degree as to impede or prevent the law of gravity from carrying the food downwardly. Both devices so function; they are equivalents. The test as to whether infringement exists is whether the accused device does the same work in the same way and accomplishes the same result as the patented device. *Nordberg* v. *Woolery*, 79 F. 2d 685 (CA-7). The court's finding that defendants' device falls within this limitation, is, we think, supported by substantial and adequate evidence.

Needless to say, if the findings are well grounded in evidence, the judgment based thereon can not be successfully attacked. In other words, unless we can say, as a matter of law, that they are clearly erroneous, we are bound by them. *Graver Tank & Mfg. Co., Inc. et al.* v. *Linde Air Products Co.*, 336 U. S. 271, *Hazeltine Research, Inc.* v. *Admiral Corporation*, No. 10058, ..... F. 2d ..... (CA-7). Here the court heard the testimony of a number of witnesses, including that of an expert. It expressly found the expert testimony, in certain respects, unworthy of credit. It saw demonstrations of the various devices in court. It passed upon the credibility of the witnesses. It acquired the knowledge that comes from practical demonstration of the two devices. Finally, it made its findings and conclusions of novelty, utility, patentable invention and infringement. To declare them clearly erroneous would be to overturn the trial court's decision upon controverted evidence and to usurp its function of passing upon the creditability of witnesses; this, under the authoritative decisions cited, we are not permitted to do.

The judgment is affirmed.

And on the same day, to-wit, on the sixteenth day of October, 1950, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

---

Monday, October 16, 1950.

Before:

Hon. Otto Kerner, Circuit Judge.
Hon. F. Ryan Duffy, Circuit Judge.
Hon. Walter C. Lindley, Circuit Judge.

| | |
|---|---|
| David C. Trager, doing business as Topic Toys, and Eoina Nudelman, *Plaintiffs-Appellees,* | Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. |
| 10118 *vs.* | |
| Crest Specialty (Not Inc.), *Defendant-Appellant.* | |

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed.

---

And afterward, to-wit, on the thirty-first day of October, 1950, there was filed in the office of the Clerk of this Court a Petition for Rehearing which said Petition for Rehearing is not copied herein.

---

And afterward, to-wit, on the sixth day of November, 1950, there was filed in the office of the Clerk of this Court an Answer to Petition for Rehearing which said Answer to Petition for Rehearing is not copied herein.

---

And afterward, to-wit, on the ninth day of November, 1950, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

---

Thursday, November 9, 1950.

Before:

Hon. Otto Kerner, Circuit Judge.
Hon. F. Ryan Duffy, Circuit Judge.
Hon. Walter C. Lindley, Circuit Judge.

| | |
|---|---|
| David C. Trager, doing business as Topic Toys, and Eoina Nudelman, *Plaintiffs-Appellees.*<br>10118 *vs.*<br>Crest Specialty (Not Inc.), *Defendant-Appellant.* | Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. |

It is ordered by the Court that the petition for a rehearing in this cause be, and the same is hereby, Denied.

---

And afterward, to-wit, on the sixteenth day of November, 1950, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

---

Thursday, November 16, 1950.

Before:

Hon. Walter C. Lindley, Circuit Judge.

| | |
|---|---|
| David C. Trager, doing business as Topic Toys, and Eoina Nudelman, *Plaintiffs-Appellants,* | Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. |
| 10118 *vs.* | |
| Crest Specialty (Not Inc.), *Defendant-Appellant.* | |

On motion of counsel for the defendant-appellant, it is ordered that the issuance of the mandate of this Court in this cause be, and the same is hereby, stayed until December 13, 1950 pursuant to the provisions of Rule 25 of the Rules of this Court.

---

And afterward, to-wit, on the twenty-second day of November, 1950, there was filed in the office of the Clerk of this Court a Designation of Record which said Designation of Record is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

---

David C. Trager, doing business as Topic Toys, and Eoina Nudelman,
*Plaintiffs-Appellees,*
*vs.*
Crest Specialty (Not Inc.),
*Defendant-Appellant.*
} Appeal No. 10,118.

DEFENDANT-APPELLANT'S DESIGNATION OF RECORD ON PETITION FOR WRIT OF CERTIORARI.

To the Honorable Clerk of the United States Court of Appeals for the Seventh Circuit:

Sir:

Defendant hereby designates for inclusion in the printed record to be filed pursuant to Rule 38, Pars. 1 and 7, of the Rules of Practice of the Supreme Court of the United States, on a Petition for Writ of Certiorari, the following:

1. Printed record before the Court of Appeals.
2. Opinion dated October 16, 1950.
3. Judgment entered October 16, 1950.
4. Order denying petition for rehearing.
5. Order staying mandate.
6. This designation of record on petition for writ of certiorari.

Signed at Chicago, Illinois, this 22nd day of November, 1950.

Clarence E. Threedy,
*Attorney for Defendant-Appellant.*

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 446

ORDER ALLOWING CERTIORARI—Filed February 26, 1951

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.